Case 1:07-cr-00541-RPP Document 100-1 Filed 02/01/12 Page 1 of 11

SAO 252 (2/75)

CRIMINAL DOCKET SHEET

DOUGLAS F. EATON, U.S. MAGISTRATE JUDGE SDNY				M9-150 07 MAG 0970 DOCKET NUMBER				
THE UNITED STATE	THE UNITED STATES VS.					FOR U.S.		
ITEMS IDENTIFIED IN THE INVOICES ATTACHED AS EXHIBIT A HERETO FROM DATAVISION, GENERAL COMPUTER & SERVICE, HOMEFRONT HARDWARE, SILICON CITY, INC., AND SILICON GRAPHICS, INC., INCLUDING BUT NOT LIMITED TO, COMPUTER EQUIPMENT, COMPUTER PARTS, LAPTOP COMPUTERS, WEBCAMS, PRINTERS, MONITORS, PROJECTORS, SCANNERS, OTHER ELECTRONIC APPLIANCES, KITCHEN ITEMS, AND OTHER ASSORTED PERSONAL COMPUTER ITEMS					TEVE KWOK 7 FOR DEFENDAN	Т		
OFFENSE			U.S. CODE CIT	TATION	1			
SEIZURE WARRANT				C.J.A.	L Pub. Def.	L Retained	 Waived	
PROCEI	EDINGS	MAG.	DATE	BAIL				
SEARCH WARRAN	T ISSUED	DOUGLAS F. EATON	6/19/07	AMOL	INT SET	Personal Rec	og.	Unsecured Bond
SEARCH WARRAN	T RETURNED	GABRIEL W. GORENSTEIN	6/27/07	\$		CONDITI	ONAL RELE	ASE
COMPLAINT FILED	i			DATE	POSTED	10% Deposit		Surety Bond
ARREST WARRANT	Γ ISSUED					Collateral or		Third Party
INITIAL APPEARANCE			Secured Bor	nd L	Custody			
PRELIMINARY EXAMINATION OR REMOVAL HEARING WAIVED SCHEDULED FOR								
DATE CONDUCTE	D	TAPE NUMBER		INTERVE	NING INDICTM	IENT OR INFORMAT	ION	
DATE			PROCEEDINGS				TAPE N	IUMBER
6/19/07	FLD. SEIZURE WARRANT. SO ORDERED U.S. MAGISTRATE JUDGE DOUGLAS F. EATON.					,	/В	
6/27/07		SEARCH WARRANT SW RENSTEIN. CASE SEALE			STRATE JUDG	ĐE		⁄В
OUTCOME		Action of District Court	Dismissedurt at	d				
	Bond Ex	onerated	Bond to 7	ransferee I	District			

MICHAEL J. GARCIA United States Attorney for the Southern District of New York By: CHI T. STEVE KWOK (CK-5420) One St. Andrew's Plaza New York, New York 10007 (212) 637-2415

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

-v.-

UNITED STATES OF AMERICA

Filed Under Seal

AFFIDAVIT IN SUPPORT OF

SEIZURE WARRANT PURSUANT

TO 18 U.S.C. § 981

Items identified in the invoices attached as Exhibit A hereto from Datavision, General Computer & Service, HomeFront Hardware,

Silicon City, Inc., and Silicon Graphics, Inc., including, but not limited to, computer equipment, computer parts, laptop computers, webcams, printers, monitors,

projectors, scanners, other electronic appliances, kitchen items,:

and other assorted personal consumer items,

Defendants in rem.

STATE OF NEW YORK)

COUNTY OF NEW YORK :ss.:

SOUTHERN DISTRICT OF NEW YORK)

RACHEL ONDRIK, being duly sworn, deposes and says:

INTRODUCTION

I am a Special Agent with the United States Department of Commerce, Office of the Inspector General, Office of Investigations, and have been so employed for approximately the past six years. For the past four years, I have been assigned to an investigation involving Dr. Daniel B. Karron, the President and Chief Technical Officer of a company called

Computer Aided Surgery, Inc. ("CASI"), which was a recipient of a Federal research grant awarded by the National Institute of Standards and Technology ("NIST") under its Advanced Technology Program ("ATP"). The ATP grant began in 2001 but was suspended in 2003 due to suspicions that Dr. Karron was misapplying Federal grant funds toward the payment of unauthorized personal and other expenses, in violation of the terms and conditions of the ATP grant program, and in violation of Title 18, United States Code, Section 666.

- 2. I make this affidavit in support of the Government's application for the issuance of a warrant to seize and forfeit the items described in the invoices that are attached to this affidavit as Exhibit A (collectively the "Computer Equipment and Household Items").
- 3. This affidavit is based primarily upon my personal involvement in the investigation; my review of, among other things, audit reports prepared by the Department of Commerce, invoices from computer equipment and personal consumer goods vendors, and Dr. Karron's and CASI's financial documents; my personal observation of the Computer Equipment and Household Items during a consensual tour of Dr. Karron's apartment with Dr. Karron's then-defense counsel in or about January 2007; and my conversations with other law enforcement officers and others. Because this affidavit is being submitted for the limited purpose

of establishing probable cause for the issuance of a seizure warrant, it does not include all the facts that I have learned during the course of this investigation. Where the contents of documents and the actions and statements of others are reported herein, they are, unless otherwise indicated, reported only in substance and in part.

- 4. On June 13, 2007, a Grand Jury sitting in this
 District returned an Indictment, 07 Cr. 541, charging Dr. Karron
 with misapplying more than \$5,000 in Federal funds from an ATP
 grant awarded to CASI toward the payment of unauthorized
 expenses, in violation of Title 18, United States Code, Section
 666. The Indictment is attached to this affidavit as Exhibit B.
- believe that Dr. Karron used part of the misapplied Federal funds to purchase the Computer Equipment and Household Items. As shown in the documentary evidence I reviewed, virtually all the Computer Equipment and Household Items were neither approved in CASI's approved budget nor approved by NIST officials orally or in writing subsequent to the approval of the budget. All of the Computer Equipment and Household Items are subject to seizure and forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C), as the proceeds of theft concerning the Federal ATP program, in violation of Title 18, United States Code, Section 666.

BACKGROUND

- 6. This application arises from an investigation of Dr. Karron and CASI in connection with an ATP grant awarded by NIST. The grant was designed to assist CASI in developing new computer technologies and computer models for use in radiation therapy and surgical planning. Under the terms and conditions of the grant, recipients must abide by the approved budget and obtain written approvals before they deviate from the budget. In addition, absent express written approvals from NIST officials, indirect costs i.e., overhead expenses such as rent, meals, Internet services, etc. cannot be paid for using program funds.
- 7. As President and Chief Technical Officer of CASI,
 Dr. Karron agreed to abide by these terms and conditions by
 signing various grant award documents and certifications.
 Accordingly, beginning in 2001, CASI was awarded the ATP grant,
 for a total of \$2.1 million that was allocated over the course of
 three years for the approved research.
- 8. From reviewing financial and accounting documents provided by Dr. Karron and CASI during the middle of the grant period, NIST discovered that Dr. Karron was repeatedly violating the terms and conditions of the grant program by, among other things, using Federal grant funds to pay rent, to renovate his apartment, to pay for restaurant meals, and to purchase computer equipment and other personal items that were not approved items

in the budget and the purchase of which had never been approved by NIST. Moreover, from my interviews with CASI employees and NIST officials, I learned that Dr. Karron made these purchases against the repeated warnings of NIST officials and his own subordinates.

- 9. By the time NIST suspended the grant in June 2003, about \$1.3 million had already been dispersed. According to a Department of Commerce audit after the suspension of the grant, approximately \$390,280 was misapplied by Dr. Karron toward the payment of unauthorized expenses.
- 10. On June 13, 2007, a Federal Grand Jury sitting in this District returned an Indictment, 07 Cr. 541, charging Dr. Karron with knowingly misapplying more than \$5,000 in Federal funds from the ATP grant awarded to CASI by NIST toward the payment of unauthorized expenses, in violation of Title 18, United States Code, Section 666.

THE COMPUTER EQUIPMENT AND HOUSEHOLD ITEMS

11. From a review of CASI's approved budget and invoices that I obtained from various computer equipment and personal consumer goods vendors, I was able to determine that Dr. Karron had used part of the misapplied Federal funds to purchase the Computer Equipment and Household Items.

- 12. By way of illustration, from an invoice obtained from a company vendor known as Datavision, I learned that Dr. Karron bought, among many other things, items identified as "Cardscan Office USB 600C V6" (retail value: \$425) and "Strobe XP 200 SheetFed 600dp" (retail value: \$559.98). From a review of financial documents, I learned that these items were paid for using ATP funds awarded to CASI. These items do not fall into any category of approved expenditures. Nor did NIST give Dr. Karron approval to purchase these items.
- 13. As another example, from an invoice obtained from a hardware store known as HomeFront Hardware, I learned that Dr. Karron bought, among many other things, a "Duromatic 5.0 Liter Pressure Cooker" (retail value: \$144.99), a "Cobalt Blue Prof Bar Blender" (retail value: \$139.95), and a "Dust Buster 7.2v Cordless Hand Vac" (retail value: \$80.95). From a review of financial statements, I learned that these items were paid for using ATP funds awarded to CASI. These items do not fall into any category of approved expenditures. Nor did NIST give Dr. Karron approval to purchase these items.
- 14. From my review of the terms and conditions of the grant, the invoices attached to this Affidavit, conversations with computer forensic experts and other persons knowledgeable about computer equipment, I learned that virtually all of the Computer Equipment and Household Items listed in the invoices

attached hereto do not relate to the research for which the ATP grant was approved.

defense counsel, M. Scott Peeler of Arent Fox LLP, gave me and other law enforcement agents a consensual tour of Dr. Karron's apartment, located at 300 East 33rd Street, Suite 4N, New York, NY 10016. I personally observed that the apartment was stockpiled with computers, computer-related equipment, electronic appliances, and other consumer items. Mr. Peeler stated to me and other agents who accompanied me on the tour that virtually all the computer equipment and household items in the apartment were purchased with Federal funds. Mr. Peeler further stated that additional items were stored in the apartment building's downstairs storage units assigned to Dr. Karron.

STATUTORY BASES FOR FORFEITURE

- 16. The statutory provisions pursuant to which the Computer Equipment and Household Items are subject to seizure and forfeiture are set forth below.
- 17. Title 18, United States Code, Section 981(a)(1)(C) subjects to forfeiture:

[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to . . . any offense constituting 'specific unlawful activity' (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

- 18. 18 U.S.C. § 1956(c)(7)(D) provides that the term "specified unlawful activity" includes, among other things, "an offense under . . . section 666 [of Title 18, United States Code] (relating to theft or bribery concerning programs receiving Federal funds)."
- 19. For the foregoing reasons, there is probable cause to believe that all of the Computer Equipment and Household Items are subject to seizure and forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C), as property constituting or derived from proceeds traceable to theft involving a grant program receiving Federal funds. Had NIST known of the disallowed purposes to which Dr. Karron would put the ATP grant funds, contrary to Dr. Karron's multiple representations in the grant award documents, the grant application would have been denied and no money would have been disbursed.
- 20. Section 981(b) provides that seizures pursuant to section 981(a) may be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.
- 21. For the reasons set forth above, I respectfully request that the Court issue a seizure warrant, pursuant to 18 U.S.C. § 981(b), for the Computer Equipment and Household Items, to be executed in the daytime between 6:00 A.M. to 10:00 P.M.

- 22. In addition, because the Computer Equipment and Household Items are located both at Dr. Karron's residence, located at 300 East 33rd Street, Suite 4N, New York, NY 10016 ("the apartment unit"), and in the apartment building's storage units assigned to Dr. Karron, I respectfully request that the Court grant authorized law enforcement agents the authority to enter the apartment unit and to access the apartment building's storage units assigned to Dr. Karron for the purpose of executing the warrant for seizure.
- around the apartment building located at 300 East 33rd Street,

 New York, NY 10016, known as the Kips Bay Towers. The apartment
 building is a 20-story residential high-rise condominium building
 located between First and Second Avenue in Manhattan. The front
 of the building is comprised of exposed concrete and large
 picture windows.
- 24. I have also personally observed the apartment unit Suite 4N. Suite 4N is located on the 4th floor of the apartment building described above. The door to the apartment unit is clearly marked "4N." The apartment unit has a living room/office area, a small kitchenette, a bathroom, and one bedroom.
- 25. During a consensual tour of the apartment unit in January 2007, Dr. Karron's then-defense counsel, Mr. Peeler, informed me that the storage units assigned to Dr. Karron are

located within the apartment building described above in the downstairs common storage area.

described above, because the investigation is ongoing, and in order to prevent the removal of the Computer Equipment and Household Items prior to the execution of the warrant for seizure, the Government respectfully requests that this Affidavit be filed and kept under seal until further order of this Court.

RACHEL ONDRIK
Special Agent
Department of Commerce
Office of the Inspector General
Office of Investigations

Sworn to before me this 19th day of June, 2007

Honorable Douglas F. Eaton United States Magistrate Judge Southern District of New York Case 1:07-cr-00541-RPP Document 1

JUDGE PATTERSON

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

DANIEL B. KARRON,

Defendant.

541

COUNT ONE

:

The Grand Jury charges:

From at least in or about October 2001, up through and including in or about June 2003, in the Southern District of New York and elsewhere, DANIEL B. KARRON, the defendant, being an agent of an organization, which organization received, in any one-year period, benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, quarantee, insurance, and other form of Federal assistance, unlawfully, willfully and knowingly, did embezzle, steal, obtain by fraud, and otherwise without authority knowingly convert to the use of persons other than the rightful owner, and intentionally misapply, property valued at \$5,000 and more that was owned by, and was under the care, custody, and control of such organization, to wit, KARRON, who was the President and Chief Technical Officer of Computer Aided Surgery, Inc. ("CASI"), knowingly misapplied more than \$5,000 in Federal funds from an Advanced Technology Program grant awarded to CASI by the National

Institute of Standards and Technology toward the payment of unauthorized expenses.

(Title 18, United States Code, Section 666.)

DREPERSON MICHAEL J. GARCIA

United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- **v** -

DANIEL B. KARRON,

Defendant.

INDICTMENT

07 Cr.

(18 U.S.C. § 666.)

MICHAEL J. GARCIA
United States Attorney.

A TRUE BILL

Foreperson

docket

DOC# 41

U.S. Department of Justice





The Silvio J. Mollo Building One Saint Andrew's Plaza New York, New York 10007

June 2, 2008,



BY FACSIMILE

The Honorable Robert P. Patterson United States District Judge 500 Pearl Street New York, NY 10007

Re: <u>United States v. Daniel B. Karron</u>, S2 07 Cr. 541 (RPP)

Dear Judge Patterson:

The Government respectfully submits this letter to move in limine to admit certain testimony that a number of Government witnesses are expected to give.

I. Background

A number of Government witnesses who worked with the defendant at Computer Aided Surgery, Inc. ("CASI") will testify that, while they were employed at CASI, they had personal, direct knowledge about the defendant's electronic bookkeeping system, known as Quickbooks. They will further testify that, as part of their everyday duties and responsibilities, they were asked by the defendant to make data entries regarding the defendant's and CASI's expenditures in Quickbooks. After they made these entries, however, the defendant frequently altered their work — for example, by changing what these witnesses characterized as an "unallowable" or "non-grant-related expense" back into an "allowable" or "grant-related expense" in the Quickbooks ledger.

These witnesses will testify that, individually and collectively, they told the defendant on multiple occasions to stop "mucking around the books," but the defendant persisted in his conduct and repeatedly violated the controls that his own employees sought to implement. As a result of this tug-of-war, the Quickbooks ledger was not a stable document but was constantly in a state of flux.

The Honorable Robert P. Patterson June 2, 2008 Page 2

II. Relevance

The Government submits that such testimony is directly relevant to the defendant's state of mind and, hence, should be admissible as evidence at trial. From defense counsel's opening statement this afternoon, it is apparent that the defense intends to argue to the jury that the defendant had nothing to hide, that while mistakes were made, they were made by other people, and that the defendant had no criminal intent to misapply grant funds. Evidence that the defendant attempted actively to interfere with accurate bookkeeping showing how grant funds were spent at CASI goes directly to the defendant's criminal intent.

III. Non-hearsay

The Government also respectfully submits that such testimony is not hearsay. Defense counsel has indicated to us that, should the "Quickbooks ledger" not be admitted into evidence, he might object to witness testimony about the ledger on hearsay grounds. For the reasons set forth below, the Government submits that any such hearsay objections are meritless.

The Government witnesses' testimony about the ledger is not for the truth of the information contained in the ledger. Indeed, the Government's argument is just the opposite — that, as a result of the defendant's interference with the work of his auditors, bookkeepers, and business managers, the ledger was frequently inaccurate. The witnesses' testimony about the ledger is offered for a different, non-hearsay, purpose: to show simply that the defendant made alterations to Quickbooks against the warnings of his employees — alterations of which these witnesses had direct, personal knowledge — and which would, in turn, illuminate the defendant's state of mind while the misapplication of CASI's and the grant's funds was occurring.

Furthermore, to require the admissibility of the ledger as a precondition of, or alternative to, such witnesses' testimony is to require the impossible. As noted above, because of the defendant's constant changes to the Quickbooks entries, CASI's ledger was in a constant state of change, with the witnesses making certain bookkeeping entries, only to have them changed back in a manner that suited the defendant. There is no comprehensive document that records every keystroke made in Quickbooks that captures every alteration the defendant made. Because the Government's witnesses are testifying as to what they directly observed, however, their testimony is no different from the typical percipient witness who testifies as to what he

My M

The Honorable Robert P. Patterson June 2, 2008
Page 3

observed from his own senses. The mere fact that the subject of these witnesses' observation was an evolving document — as opposed to, say, a car accident — does not make their testimony hearsay. And just as an eyewitness's testimony about a car accident is not made any less admissible because his observations were not recorded on camera, the Government witnesses's testimony about the changing ledger is not any less admissible because there does not exist a contemporaneous record documenting such changes over time.

IV. Expert Testimony

Finally, at least with respect to two of the Government's witnesses — Joan Hayes and Belinda Riley — who are expected to be qualified as expert witnesses, the Rules of Evidence explicitly do not require the admissibility of the underlying documents for their expert testimony to be admissible. See Fed. R. Evid. 703 ("If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted.").

V. Conclusion

For the foregoing reasons, the Government respectfully submits that the proffered testimony of Government witnesses concerning changes to Quickbooks the defendant made is non-hearsay evidence and admissible at trial.

Respectfully submitted,

MICHAEL J. GARCIA United States Attorney

By:

Chi T. Steve Kwok Christian R. Everdell

Christian R. Everdell Assistant United States Att

Assistant United States Attorneys (212) 637-2415 / (212) 637-2556

cc: Ron Rubinstein, Esq. (by fax and email) Counsel to Daniel B. Karron



FACSIMILE COVER SHEET

U.S. ATTORNEY'S OFFICE, S.D.N.Y. ONE ST. ANDREW'S PLAZA NEW YORK, NEW YORK 10007

From:

Steve Kwok

Assistant United States Attorney

Phone:

(212) 637-2415

Fax:

(212) 637-2390

No. pages (including cover sheet): 4

Date sent:

June 2, 2008

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To:

The Honorable Robert P. Patterson

212-805-7917

To:

Mr. Ron Rubinstein

212-679-1844

Re:

US v. Karron, S2 07 Cr. 541 (RPP)

Message:

Please see the attached letter. Thank you.

	76K9KARA	Arraignment	
1	UNITED STATES DISTRICT CO SOUTHERN DISTRICT OF NEW	YORK	
2		x	
3	UNITED STATES OF AMERICA,		
4	v.	C)7 CR 0541 (RPP)
5	DANIEL B. KARRON,		
6	Defendant.		
7		x	
8			New York, N.Y.
9			June 20, 2007 2:30 p.m.
10			
11	Before:		
12	HON. ROE	ERT P. PATTERSON	I, JR.,
13		Ι	District Judge
14		APPEARANCES	
15	MICHAEL J. GARCIA	£	
16	United States Attorn Southern District of		
17	CHI T. STEVE KWOK Assistant United Sta	ates Attorney	
18	RON RUBINSTEIN		
19	Attorney for Defenda	IIIC	
20			
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22			
23			
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1	(In open court; case called)
2	THE DEPUTY CLERK: Is the government ready in this
3	matter?
4	MR. KWOK: We are. Good afternoon, your Honor, Steve
5	Kwok for the government.
6	THE COURT: Good afternoon, Mr. Kwok.
7	THE DEPUTY CLERK: Defendant ready in this matter?
8	MR. RUBINSTEIN: The defendant is ready. Good
9	afternoon, your Honor. The defendant is represented by Ron
10	Rubinstein of Rubinstein and Corozzo.
11	THE COURT: Good afternoon, Mr. Rubinstein. And good
12	afternoon Mr. Karron.
13	This is on for arraignment, is it?
14	MR. KWOK: Arraignment and presentment.
15	THE COURT: Excuse me?
16	MR. KWOK: Arraignment and presentment.
17	THE COURT: All right. Daniel B. Karron, you have a
18	right to remain silent. You need not make any statement. Even
19	if you have already made statements to the authorities, you
20	need not make any additional statements. Any statement you do
21	make can be used against you.
22	Is the defendant a citizen of the United States?
23	MR. RUBINSTEIN: Yes, your Honor.
24	THE COURT: Mr. Karron, you have the right to be
25	represented by an attorney today and at all future proceedings

76K9KARA Arraignment in this case and if you're unable to afford an attorney I will 1 appoint an attorney to represent you. 2 I believe you're represented by retained counsel; is 3 4 that correct? 5 THE DEFENDANT: That is correct. 6 THE COURT: I'll go on to arraignment. Daniel B. Karron, Mr. Rubinstein, have you seen a copy of the indictment 7 charging the defendant with being an agent of an organization 8 which received benefits of more than ten thousand dollars under 9 a federal program and obtaining a property value of more than 10

Have you seen a copy of the indictment charging the defendant with one count, violation of Title 18, United States Code, Section 666.

five thousand dollars which was under the control of that

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organization?

MR. RUBINSTEIN: Yes, your Honor. I have seen it, reviewed it with the defendant. We would waive the public reading and ask the court to enter a plea of not guilty on behalf of Dr. Karron.

THE COURT: Dr. Karron, have you seen a copy of the indictment charging you with obtaining -- misapplying more than five thousand dollars in federal funds from an organization receiving more than ten thousand dollars in a single year under a federal program?

THE DEFENDANT: Yes, I have.

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1	THE COURT: Have you discussed the charges with
2	Mr. Rubinstein?
3	THE DEFENDANT: Yes, I have.
4	THE COURT: Do you wish to have the indictment read to
5	you at this time or
6	THE DEFENDANT: That's not necessary, sir.
7	THE COURT: You don't. You wish to waive a reading of
8	the indictment?
9	THE DEFENDANT: That is correct.
10	THE COURT: And you wish a plea of not guilty entered
11	at this time on your behalf?
12	THE DEFENDANT: That is correct.
13	THE COURT: A plea of not guilty will be entered on
14	behalf of the defendant at this time.
15	When will the government make the required discovery
16	to the defense?
17	MR. KWOK: We have discovery. I'd ask for about three
18	weeks from Mr. Rubinstein if that's satisfactory to the court.
19	THE COURT: So what date?
20	MR. KWOK: July 11.
21	THE COURT: July 11?
22	MR. KWOK: Yes.
23	THE COURT: July 11, 2007 for discovery to the
24	defense.
25	How long, Mr. Rubinstein, would you like for any

1	motions?
2	MR. RUBINSTEIN: Well, your Honor, what I'd ask if
3	your Honor could set a status conference after we get all
4	discovery. Mr. Kwok has indicated that the discovery is
5	voluminous.
6	THE COURT: How many days after July 11 do you wish to
7	have
8	MR. RUBINSTEIN: I'm going away on the 13 th and I'll
9	be back on the 21st. So I would ask for the first week in
10	August, your Honor, to make motions.
11	THE COURT: All right.
12	THE DEPUTY CLERK: August 2.
13	THE COURT: August 8.
14	MR. RUBINSTEIN: That's fine, your Honor.
15	MR. KWOK: Is that the second?
16	THE DEPUTY CLERK: Eighth.
17	THE COURT: Second or eighth?
18	MR. RUBINSTEIN: Prefer the eighth, your Honor.
19	THE COURT: August 8. Is that for motions or to
20	advise us of motions?
21	MR. RUBINSTEIN: If I could advise you of the motions
22	on that day, your Honor.
23	THE COURT: All right. Since it's voluminous material
24	I think that's fair.
25	I would expect the motions to be made soon thereafter.

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1	So we'll put it down for August 8 at 4:00.
2	MR. RUBINSTEIN: That's fine, your Honor.
3	MR. KWOK: That's fine for the government.
4	THE COURT: Have the parties agreed on a bail package
5	or what is the situation with respect to pretrial detention?
6	MR. KWOK: The government's position is that the
7	defendant can be released on his own recognizance but I was
8	just told by Mr. Rubinstein that the defendant needs to travel
9	throughout the country for lecture purposes.
10	THE COURT: For what purposes?
11	MR. KWOK: For lecturing.
12	THE COURT: Oh.
13	MR. KWOK: For now I think the defendant can be
14	released on the condition that he surrender his passport, which
15	he already did, and no new applications for travel be made.
16	Once the defendant has satisfied the condition of
17	securing two cosigners for a \$50,000 PRB, then the government
18	would consent to allowing him to travel for those lecture
19	opportunities.
20	THE COURT: Throughout the United States?
21	MR. KWOK: I was told that he only needs to go to the
22	District of Columbia and Philadelphia. I'm not aware of other
23	locations.
24	MR. RUBINSTEIN: Your Honor, he has business and he

travels for the purposes of his business and he $\operatorname{--}$ right now

Arraignment

he's involved in a contract negotiation between the company he works for out of Washington, D.C., ATK, and the University of Pennsylvania. So he anticipates going to Pennsylvania in the near future and also to Washington, D.C.

He may be forced to sell his apartment in New York for financial reasons and he would then look to reside with his former roommate in Connecticut.

So we surrendered him this morning. This investigation has been going on I think since 2004, he's been aware of it, and we arranged a voluntary surrender with the passport.

I would ask your Honor for at this time to give him permission to go to Connecticut; Philadelphia, Pennsylvania; and Washington, D.C. along with the Southern and Eastern Districts of New York until we secure these two suretors.

Does your Honor want us to go before the magistrate with the two suretors, or how should we arrange that?

THE COURT: Well, you can go before the magistrate with two sureties and the U.S. Attorney. The U.S. Attorney, I gather, wants to approve the sureties beforehand; is that right?

MR. KWOK: Yes, of course.

THE COURT: So as I understand the parties agreed on the personal recognizance bond signed by two sureties satisfactory to the government?

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1	MR. RUBINSTEIN: No, your Honor
2	THE COURT: Is that right?
3	MR. RUBINSTEIN: They've agreed
4	THE COURT: What?
5	MR. RUBINSTEIN: They've agreed temporarily to release
6	the doctor on a personal recognizance bond, his own, with
7	limited travel rights.
8	THE COURT: Without any sureties?
9	MR. RUBINSTEIN: Without any sureties.
10	THE COURT: Is that correct? I just want to be sure.
11	MR. KWOK: No. My position is that today Mr. Karron
12	can be released on his own recognizance but even after the
13	conditions are satisfied
14	THE COURT: Wait a minute. Today the parties are
15	agreed he will be released on his own recognizance?
16	MR. KWOK: That's correct.
17	THE COURT: When do you require the two sureties to
18	sign?
19	MR. KWOK: Within a week.
20	THE COURT: Within a week.
21	Is that agreed upon, Mr. Rubinstein?
22	MR. RUBINSTEIN: Could we have ten days, your Honor,
23	that would be a week from Friday?
24	THE COURT: That's fine. Within a week from Friday or
25	ten days from now he will provide a recognizance bond signed

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1	by personal recognizance bond for \$50,000 signed by two
2	sureties acceptable by the government.
3	MR. KWOK: That's correct.
4	THE COURT: Now as to the areas which he may travel?
5	MR. KWOK: Exactly.
6	THE COURT: He can travel, as I understand it, to the
7	District of Columbia, to Pennsylvania, to New York, and
8	Connecticut. And any further travel would have to be upon
9	application to the court.
10	MR. KWOK: Exactly. That's the government's position.
11	THE COURT: Is that all right, Mr. Rubinstein?
12	MR. RUBINSTEIN: Yes, your Honor.
13	THE COURT: All right. Now, then are there any other
14	conditions of release that I have to be aware?
15	Surrender the passport.
16	MR. KWOK: Which he already did today.
17	THE COURT: He's done that.
18	MR. KWOK: And no new applications.
19	THE COURT: And no new applications for a passport
20	will be made without notice to the government.
21	MR. KWOK: That's correct, your Honor.
22	THE COURT: Anything further?
23	MR. KWOK: The only other thing from the government is
24	we would ask for the exclusion of time to allow the government
25	to produce discovery and for the defense to review discovery

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Arraignment

until our next appearance on August 8. 1 2 THE COURT: Wait a minute. Exclusion of time. You 3 just want an exclusion of time from the Speedy Trial Act; is 4 that correct? 5 MR. KWOK: That's correct. THE COURT: Your application is granted. Time will be 6 7 excluded under the Speedy Trial Act until August 8 because discovery has to be made, and the unavailability of defense 8 counsel for a period of time, and for an opportunity for 9 10 defense to review that discovery and determine whether any motions should be made. Under those conditions, the exclusion 11 12 is granted. Thank you, your Honor. 13 MR. KWOK: 14 THE COURT: Anything else? 15 Nothing from the government. MR. RUBINSTEIN: Nothing from the defense, your Honor. 16 17 THE COURT: All right. 1.8 MR. KWOK: Thank you, your Honor. 19 THE COURT: Thank you very much. 20 (Adjourned) 21 22 23

	770AAKARA	Arraignment	
1	UNITED STATES DISTRICT CO		
2	SOUTHERN DISTRICT OF NEW		
3	UNITED STATES OF AMERICA	,	
4	v.		07 CR 541 (RPP)
5	DANIEL B. KARRON,		
6	Defendant		
7		x	
8			New York, N.Y. July 24, 2007
9			4:00 p.m.
10	Before:		
11		BERT P. PATTERSON	N. JR.,
12			District Judge
13			
14		APPEARANCES	
15	MICHAEL J. GARCIA United States Attorn	nev for the	
16	Southern District of STEVE KWOK	_	
17	Assistant United Sta	ates Attorney	
18	RONALD RUBINSTEIN Attorney for Defenda	ant Karron	
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1	(Case called)
2	MR. KWOK: Steve Kwok, for the government.
3	MR. RUBINSTEIN: Defendant is ready for the
4	arraignment is represented by Ron Rubinstein.
5	Good afternoon, your Honor.
6	THE COURT: Good afternoon, Mr. Rubinstein.
7	Good afternoon, Mr. Karron.
8	I have a superseding indictment here charging the
9	defendant with receiving federal benefits in the one year
10	period in excess of \$10,000 and converting it to his own use or
11	the use of persons other than the rightful owner, \$5,000 and
12	also containing the forfeiture allegation asking that the
13	proceeds of the alleged theft be forfeited upon construction
14	for the substitute assets belonging to the defendant. In that
15	event to be forfeited in the event forfeitable property is no
16	longer pliable.
17	Daniel B. Karron, Mr. Rubinstein, have you seen a copy
18	of the superseding indictment?
19	MR. RUBINSTEIN: We have, your Honor.
20	THE COURT: Have you discussed it where your client?
21	MR. RUBINSTEIN: I have, your Honor.
22	THE COURT: Does he wish to have it read to him at
23	this time or does he waive the reading?
24	MR. RUBINSTEIN: He waives the reading, your Honor.
25	THE COURT: All right. Mr. Karron, have you seen a

	770AAKARA Arraignment
1	copy of the superseding indictment?
2	THE DEFENDANT: Yes, I have.
3	THE COURT: And have you discussed it with
4	Mr. Rubinstein?
5	MR. RUBINSTEIN: Yes, I have.
6	THE COURT: Do you wish to have the indictment read to
7	you or do you waive the reading?
8	THE DEFENDANT: I waive the reading.
9	THE COURT: Do you wish a plea of not guilty be
10	entered in your behalf?
11	THE DEFENDANT: I wish to enter a plea of not guilty.
12	THE COURT: All right. A plea of not guilty will be
13	entered on your behalf.
14	Where do we stand on the discovery in this matter?
15	MR. KWOK: I've produced discovery to defense counsel.
16	MR. RUBINSTEIN: I don't know that they've produce all
17	the discovery but I have a problem that I think
18	THE COURT: I just want to be sure the discovery has
19	been produced.
20	MR. RUBINSTEIN: Some discovery was produced but I had
21	understood from the government last time it doesn't seem that
22	there's anywhere near the discovery that they indicated they
23	had, nor should it be what they have.
24	MR. KWOK: I don't know what Mr. Rubinstein was
25	expecting but that's the entirety of the discovery that we

I	
1	have. The only thing we did not produce
2	THE COURT: They are talking. Just a second. I want
3	you to have a chance to talk.
4	MR. RUBINSTEIN: Yes, sir.
5	THE COURT: So go ahead, Mr. Rubinstein, talk and we
6	will come back to you.
7	(Pause)
8	MR. RUBINSTEIN: They haven't produced anything from
9	the account and Joan Haze rolling documentation, this is a
10	document case and expenses and following expenses, they haven't
11	produced any of that. They seized all this stuff. They
12	haven't produced the records, employee records and what has
13	been paid to employees. They claim that the \$400,000 out of
14	this grant was misappropriated but they
15	THE COURT: They haven't given you any indication of
16	how it was misappropriated.
17	MR. RUBINSTEIN: Correct, your Honor. Precisely.
18	MR. KWOK: This is the fist time that I've heard that
19	discovery was insufficient. I've produced discovery which is
20	about two boxes of it about two weeks ago to defense counsel
21	and that's the entirety of the documents that we have.
22	THE COURT: To Mr. Rubinstein?
23	MR. RUBINSTEIN: Mr. Rubinstein.
24	THE COURT: How was it produced to him?
25	MR. KWOK: It was packaged in a box in our office and

Mr. Rubinstein sent someone from his office to pick them up.

MR. RUBINSTEIN: Correct, your Honor. And I just thought that there was more discovery coming. Nobody had indicated that this was the entirety of the discovery that was available. And, frankly, from looking at it as we see it there is all -- they seized all of Dr. Karron's records. They have not produced for us his records. I don't know how he could possibly defend this case if he doesn't have access to all his records. Not only did they take all the records, they seized all of the computers with all of the disks inside. They say that they're not interested in the disks. They just want the shells. But they haven't returned any disks and --

THE COURT: All they have to produce is things relative to the crime charged.

MR. RUBINSTEIN: Everything ask --

THE COURT: They can have the seizure and then they may be isolating for you and for your client's benefits those records for safety will go to prove or may be used as proof of the crime charged.

MR. RUBINSTEIN: Judge, we need the records of every dime that was received from the government and how each dime was spent. They just give us a blanket thing suggesting that there was 300 and some odd thousand dollars that were inappropriately expenses.

THE COURT: Well, now, wait. Let me ask you a

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1 question. These are the records of Computer Aided Surgery Inc. 2 you are talking about? 3 MR. RUBINSTEIN: Yes, your Honor. THE COURT: And Computer Aided Surgery Inc. financial 4 5 records aren't included in the documents that you have? 6 MR. KWOK: It was. I am honestly astounded by what 7 Mr. Rubinstein said. The documentary evidence is voluminous. It includes the documentation of the grant money that 8 9 Dr. Karron and his company received. It also included bank 10 statements of how those money got spent. We have American 11 Express card statements documenting every transaction unrelated 12 to the grant that was spent. 13 THE COURT: American Express card statements cards 14 that were issued by the corporation? 15 MR. KWOK: No. It was an American Express card that 16 was in the company's name, but, nonetheless, used to purchase 17 unauthorized --18 THE COURT: It was in the company's name. 19 MR. KWOK: Exactly. It was. 20 Then we also produced bank account statements 21 belonging to the defendant himself personally as well as to the 22 company and then it was pretty obvious if you look at the money 23 flow, how money was spent, what type of money came from where. 24 And Mr. Rubinstein mentioned accountant Joan Haze's audit

Joan Haze is an accountant that for a while was

employed by CASI Company to look into accounting and her full audit report was any nooks and so that she relied on.

The only thing hasn't been turned over is the actual physical checks also used to purchase unauthorized items. And in my discovery letter I offered to make those available for inspection. But copies of those checks are attached to the bank statements that I've produced to defense counsel.

So I don't know what else is relative that he wants

THE COURT: The originals are available for

inspections and the copies have already been produced to the

defendant?

MR. KWOK: That is correct, your Honor.

MR. RUBINSTEIN: A number of which are illegible. We don't have any of the card records of Mastercards and the other cards charge cards that were used, Paypal where they paid expenses. Dr. Karron produced to the government invoices showing where these items were purchased. Those invoices haven't been turned back over to the defense. This is a technical case, your Honor.

THE COURT: But Mr. Rubinstein, as I understand the thrust of the government's case is not that certain funds weren't spent for business purposes, but that of the funds received some were diverted to the defendant's personal use; is that right?

MR. KWOK: That's correct, your Honor.

THE COURT: So you don't need -- Mr. Kwok's point is you don't need what the business expended properly. It's what the business expended improperly that's at issue.

MR. KWOK: That is exactly right, your Honor. The only thing the government needs to prove at the trial is that more than \$5,000 of federal funds were misspent and so we don't need to prove every dime that is granted through dr. Karron's company was spent. We only need to prove \$5,000. We currently believe that about 390,000 was spent but an amount of about \$5,000 is considered relevant conduct. But the element of the crime are just \$5,000.

THE COURT: Mr. Kwok, you also have to prove that the corporation Computer Aided Surgery Inc., CASI as you call it, received benefits and in a one year period in excess.

MR. KWOK: That's correct, your Honor. And we did turn over documents stating, documenting that fact including proposed budgets, final approved budget and the bank statements also would document the money that Dr. Karron's company received was in excess of the statutory special amount.

THE COURT: Well, I think that they to prepare for trial, Mr. Kwok, they would want to have all documents that you contend were spent in excess of the \$5,000, in other words, for their personal benefits.

MR. KWOK: Yes. And I did turn over everything that I had. I am not withholding anything relevant to the offense

Arraignment

1	charged in this case. But my point is simply that in light of
2	the \$5,000 threshold even
3	THE COURT: Have you got a covering letter that
4	accompanied these documents?
5	MR. KWOK: Yes, I have a cover letter.
6	THE COURT: Itemizes the items that were turned over?
7	Categorized?
8	MR. KWOK: Yes, in rough categorization.
9	THE COURT: In the period of time that's involved?
10	MR. KWOK: That is correct, your Honor.
11	MR. RUBINSTEIN: Categorized not itemized, number one.
12	THE COURT: They don't have to itemize as long as they
13	are complete.
14	MR. RUBINSTEIN: But they are not complete, Judge.
15	THE COURT: Are they Bates numbered?
16	MR. KWOK: They are Bates numbered.
17	MR. RUBINSTEIN: Let's say, Judge, that they say
18	expenditure and was inappropriate and we have an invoice that
19	we turned over to them that shows that it was appropriate.
20	They don't want to give us back the invoice. So how could
21	Dr. Karron prepare a defense? And also the issue of whether or
22	not he intended to commit a crime is important to how he
23	expended all the grant money in this case. And the employment
24	records are records which they claim that he overpaid employees
25	as I understand it. And, therefore, that was part of this

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390,000 and the monies that he received himself. He was a salaried employee. We need all of these documentation. I don't see how that's a burden on the government to give back his own documents.

MR. KWOK: Mr. Rubinstein seems to have in mind documents that we're not aware of. I've turned over everything. In terms of documentary proof I think that discovery that I produced numbered over 5000 or so pages. I am not aware of any documents in the government's possession that Mr. Rubinstein is referring to that would be relevant to this case at all.

THE COURT: What he wishes to do is to go through the expenditures that you have isolated and furnished him the checks or charge accounts and he wants to look at them.

The invoices or receipts, as I understand it, that he claims would show that that expenditure which made facially look at appear to be diversion of improper diversion of funds, was in fact the proper diversion of funds.

That is what, he wants it for his defense, so to speak.

MR. KWOK: I think to the extent that there is a defense based on the use of funds the documents that I have produced are entirety of the documents and to the extent that defense counsel can't marshal a defense based on those documents --

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THE COURT: What about providing him with a copy of the documents seized so that he can, perhaps, develop the thesis that these expenditures from those documents were, in fact, not for his personal use but were, in fact, for company purposes?

MR. KWOK: I'm not aware of any seizure of documents, per se. We did as part of a separate action filed a seizure warrant in magistrate court to seize the computers. And the only reason we did that is because a lot of the equipment used, purchased using CASI's funds were unauthorized expenses and we wanted to make sure after this case is over there will be valuable property to satisfy the forfeiture allegation.

But after having done that, I spoke to defense counsel and he was worried that in those computers there might be attorney/client privilege materials and I assured him and he was fine at the time from our conversation that the government would not attempt to go into those computers to snoop around to violate attorney/client privilege or other privileged materials, but would just leave the computers as is and just seize them without searching them.

So I don't know whether Mr. Rubinstein is now suggesting that we go through those computers to try to search for stuff that may or may not be related to this case.

MR. RUBINSTEIN: I don't know why the government can't just make duplicates of all the disks that are inside these

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1	computers that have nothing to do with the hardware and produce
2	them for the defense. Those are Dr. Karron's records in there.
3	THE COURT: Duplicate record made, is that what you
4	are saying?
5	MR. RUBINSTEIN: Yes. We want to be able to have the
6	orders records that are on the computer.
7	MR. KWOK: I believe to the extent that there are
8	those records, those records have already been turned over
9	because those records were used by the internal auditor to
10	conduct the audit and if specifically Dr. Karron as I
11	understand it, kept a very detailed Quicken books whether it be
12	personal checks or expenses of the company.
13	THE COURT: I don't follow you.
14	MR. KWOK: What I am saying is to the extent that
15	there are records in those computers, those records have
16	already been turned over to the defense.
17	THE COURT: How? In what? Who turned them over?
18	MR. KWOK: I did. And that's because
19	THE COURT: The computer's hard drive, soft drive?
20	MR. KWOK: The documents the software, the documents
21	in the computers that may be relevant to this case. And that
22	is because even before the government indicted the defendant
23	there was an internal audit by the internal auditor that looked
24	at all the records that Dr. Karron had to prepare her
25	reasonable internal audit. And as part of our discovery to
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produce that audit report we also produced the underlying date that supported that audit report. And, specifically, what I was referring to is Dr. Karron's Quicken bookkeeping system in which he would document in a spreadsheet format every check that he wrote either on behalf of himself or on behalf of the company, the date and the amount and that spreadsheet was also included in the materials that I turned over.

THE COURT: Who did you deliver these materials to?

MR. KWOK: As I stated, I agreed with defense counsel to put them on the first floor of our office and, subsequently, defense counsel sent somebody to pick them up.

THE COURT: So that's separate and apart from the discovery in that case?

MR. KWOK: No. That is part of the discovery, part of the two boxes that I referred to.

THE COURT: But I thought from your description that this had something to do with the internal audit.

MR. KWOK: Which preceded the indictment. So when I produced discovery I had already gotten the underlying raw data that supported the internal audit report that I also turned over as part of my discovery.

THE COURT: Had you turned over the audit material to them at the same time?

MR. KWOK: Yes, I did.

THE COURT: So that they have the computer or the

computer material.

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MR. KWOK: They have a print out of it. The Quicken bookkeeping system, the print out from the spreadsheet that he was referring they have that already.

MR. RUBINSTEIN: I will submit a letter to the Court outlining all the matters the government has that has not been turned over. They haven't turned over the Quicken reports showing the expenses line by line. They haven't turned over a number of items and I don't understand why they are resisting giving us these disks either. Since they don't want to use these disks and they have no monetary value they could turn over the disks and hard drive to us without it.

THE COURT: I don't know that they want to do that because I suppose they could be modified.

MR. RUBINSTEIN: Let them duplicate it then. I don't understand. Dr. Karron from day one has told me he has voluminous records, as the government's indicated, he has records showing every check he wrote, every credit card with a back-up document, all of this is on the computers. All of this stuff is on the computers, your Honor. He even took a little parking ticket from me for a few dollars that he wanted to save as an expense. I mean this is the kind of detailed stuff he has in these records and I think these records are to show that he never had any intention of doing anything illegal. But I will produce for the Court the letter outlining exactly what

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was turned over and exactly what Dr. Karron claims is missing and we can go forward from that.

THE COURT: Let's do it very promptly.

MR. RUBINSTEIN: I am willing to do that, judge, and I will do it very promptly for the following reason: I, because everything that Dr. Karron has has been seized, including his apartment condominium. Frankly, I don't understand the theory of it, but the government's seized it. It's part of the forfeiture. He's owned this apartment for many years before this grant. The only thing they say he paid is maintenance out of money that came from the grant. The apartment is used as an office.

But bottom line is he is not in a position to have private counsel. I am willing to stay aboard I was going to make a Monsanto application to see if we can get paid out of forfeiture and he is not a position to leave the apartment. He needs a place to live. So I am going to ask the Court at this time since he is not in a position to retain counsel that your Honor have him fill out forms for CJA.

THE COURT: I can't imagine -- receiving a retainer to cover the work that's been done so far, Mr. Rubinstein. It doesn't appear to me that there's been anything other than some discovery produced and appearance on arraignment. So I don't know about -- this man is alleged to have gotten \$390,000.

MR. RUBINSTEIN: They don't claim he has it. They

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Arraignment

claim that he spent it outside of the dictates of the grant. Indon't think anybody is claiming that he put any of this money into his pocket or has it still in his pocket. They're claiming that he expended items that he had no right to expend outside of the budget. Had he to submit a budget. And the money was spent. There is no issue that the money was spent. It think the government will concede that. The question is whether or not the monies was spent appropriately pursuant to the grant and what was contained in the budget.

THE COURT: I understand. You'd better get your letter in quickly so Mr. Kwok can respond to it. But I don't see why the materials that Mr. Kwok, the printed material which I gather is a print out from the computer isn't adequate for your purposes. So you'd better cover that as an addition to the computer disks. Because computer disks, I suppose, what I would have to have is not only computer disk for you but a computer disk for the Court. So if there is any dispute about production or alteration of the records of the subsequent time it can be readily ascertained through normal alterations. That is an expense. I don't know what the expense is to duplicate these documents.

MR. RUBINSTEIN: Dr. Karron says there's approximately one thousand gigabytes which is ten terabytes. I, frankly, Judge, don't know what those letters mean. But he says that it would probably cost to have an expert duplicate that between

Arraignment

ten and \$20,000.

MR. KWOK: Your Honor, if I may, I mean these computers that we're talking about are not just your ordinary laptop computers. They are very high powered super computers primarily used for research and other purposes. I don't know whether it's even cost effective or even technically feasible to download or make a copy of everything on these hard drives with terabytes of memory.

To the extent, again, that there is any record at all in those computers I believe the government's already produced a hard copy print out of those accounting records. The rest I am not sure what Mr. Rubinstein is referring to in these computers. But as far as records go relating to this case that the government intends to rely on those have all been turned over to defense counsel.

MR. RUBINSTEIN: The defense is this case is very simple. He didn't intentionally do anything wrong, if he did anything wrong at all. So showing all that he did for the money is going to be part of the defense to show the jury that he had no intention of doing anything improper. This man even after the grant was stopped continued working on --

THE COURT: I don't think that flies, Mr. Rubinstein.

I think you can't go into a defense that shows all the good
things he did and all the things that he did. The question is
whether or not these funds were misapplied and that is the

issue.

I agree that you have to have a record to be able to show that they weren't misapplied but I think I haven't heard anything so far. Maybe you can educate me, but I haven't heard anything so far that indicates that we should do more than see whether there's more than a financial record that you require or any rebuttal of the case that this application of funds is going is to be produced.

MR. RUBINSTEIN: There's also e-mails relating to the grant, your Honor, and those documentation are important for the defense. The government -- I'd ask your Honor that the government provide us with a detail list outlining the \$390,000 that they now claim was inappropriately spent by Dr. Karron and then at least we have an idea what documents relate to that.

THE COURT: They've produced those to you?

MR. RUBINSTEIN: No, they have not shown us any list of where the alleged missing money is.

THE COURT: Maybe you ought to go and have a personal consultation with Mr. Kwok and maybe he can show them to you. That would be the best way.

MR. KWOK: I'll be glad to do that, your Honor.

Again, I think your Honor has it exactly right. The government is not contending that, for example, some of the money, for example, that the government contends was misapplied was used for example to renovate Dr. Karron's apartment. We are not

1	saying every cent towards the renovation was spent out of				
2	government funds. Dr. Karron did spend some of his own money				
3	as part of that home renovation. But that doesn't take away				
4	from the fact that the government funds were indeed misapplied				
5	toward home renovations. So I don't know what the records that				
6	Mr. Rubinstein had in mind				
7	THE COURT: He is saying some of the home was used and				
8	as na office.				
9	MR. KWOK: That's actually quite irrelevant under the				
10	rules of the grant because even if it was indeed used as an				
11	office you cannot pay overhead expenses using grant money.				
12	Grant money can only be used for direct and research expense				
13	and it is clear rent is not used for those items.				
14	THE COURT: Not rent but what about fixings up the				
15	office so that if that or bringing electricity or bringing				
16	in high powered computers into the office.				
17	MR. KWOK: That's also disallowed and the reason is				
18	simply because there is an approved budget. Every item that				
19	Dr. Karron was allowed to use was listed in that budget and if				
20	you deviate from that budget you first have to seek pre				
21	approval to do that and at no point did Dr. Karron receive				
22	that.				
23	THE COURT: Renovation was a budgeted item?				
24	MR. KWOK: It was not allowed.				
25	THE COURT: Any renovation of the office was a				

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budgeted item?

MR. KWOK: I don't believe any of it was. We are only allowed to pay, for example, to hire scientists and research personnel and to buy a specified number of computers for your research. But to renovate your apartment or office to eat out which is another item that Dr. Karron spent money on or to even pay for Internet services they are specifically disallowed under the terms of the grant. And another big item is back rent, and that is also clear that you are not supposed to pay rent or mortgage under the grant.

MR. RUBINSTEIN: The government wants the grant to be written in granite. The fact of the matter is that these grants they have modifications all the time. People spend money, as long as they're spending it legitimately that's an issue at trial.

THE COURT: But, Mr. Rubinstein, it's very clear that if there's a grant it'll have terms to it and you can argue it but they are not binding. There can be modifications and the jury will make a determination.

When will you have your letter that you wish to produce to Mr. Kwok?

MR. RUBINSTEIN: I'll have that in a week from tomorrow which is which is the first of August.

THE COURT: When can we hear the reply?

MR. KWOK: How about a week.

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1		THE COURT	: August	8?			
2		MR. KWOK:	That wo	uld be f	ine.		
3		THE COURT	: Okay.				
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1	UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	
2	x	
3	UNITED STATES OF AMERICA	
4	v.	07 Cr. 541 (RPP)
5	DANIEL B. KARRON,	6
6	Defendant.	Conference
7	x	
8		New York, N.Y. August 8, 2007
9		4:15 p.m.
10	Before:	
11	HON. ROBERT P. PATTERSON, JR.	
12		District Judge
13		
14	APPEARANCES	
15	·	
16	MICHAEL J. GARCIA United States Attorney for the	
17	Southern District of New York One St. Andrews Plaza	
18	New York, New York 10007 CHI T. STEVE KWOK	
19	Assistant United States Attorney	
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25	l e e e e e e e e e e e e e e e e e e e	

788rkarc 1 (Case called). THE CLERK: Is the government ready? 2 3 4 Steve Kwok for the government. Honor. 5 6 7 8 afternoon, Mr. Kwok. 9 10 correct? 11 MR. RUBINSTEIN: 12 13 14 Rubinstein? 15 16 17 18 19 20

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MR. KWOK: Yes, we are. Good afternoon again, your

MR. RUBINSTEIN: For the defendant, Rubinstein & Corozzo by Ron Rubinstein. Good afternoon, your Honor.

THE COURT: Good afternoon, Mr. Rubinstein. Good

Dr. Karron is excused from this conference, is that

That's correct, your Honor.

THE COURT: Have you had a chance to see the government's answer to your motion of August 2nd, Mr.

MR. RUBINSTEIN: Yes, your Honor. Frankly, it begs the entire question. They have all of these documents which are the property of Dr. Karron. They say in their letter that they haven't accessed the CD's that were in these computers. This is all we are looking for. We are looking for the records that really are his records that he is entitled to under any scenario.

THE COURT: How do not want to get them? How do you want it to be done?

MR. RUBINSTEIN: We will provide an expert under the government's supervision to duplicate the CD's and the hard

drives that are in this equipment. That will resolve all the issues, your Honor. Virtually everything that is asked for are items that were taken from Dr. Karron, items that were either prepared by his then accountant --

THE COURT: I don't see that they are. But from you what you just said, I gather what you were saying is that he has things stored in these computers that he wants to bring out.

MR. RUBINSTEIN: That is correct, your Honor.

THE COURT: There they are in the computer drive or whatever, and he wants to get them out of there. What's your thought? I don't know how the expert is going to isolate them. Let's say he hires an expert and gets them out. A copy to each side?

MR. RUBINSTEIN: The government says that they haven't accessed these, they haven't looked at them, they don't want it for their case. That's fine with me. We want to get back either the originals or we'll take a copy. I don't see why they are entitled to --

THE COURT: You have to have some way to verify that what is then presented later is a copy.

MR. RUBINSTEIN: Yes, your Honor. We will provide to the government, if we intend to introduce anything, copies of that portion in both a hardcopy and CD format with a reference to which CD's they already have the originals. They will still

have the originals of them, so there can't be any question that there was anything deleted or changed or anything like that.

They will still have the original product.

THE COURT: I don't know that they do, from my reading of Mr. Kwok's letter.

MR. KWOK: The government would oppose that. First of all, I understand that the defendant had his computer seized. If he wants them back, the proper procedure is to file a motion in that civil forfeiture action to challenge the seizure of the computer. It's not by using the process of criminal discovery to sort of try to get stuff that he wants back from those hard drives that I understand he may find useful for his research and other personal purposes.

But for this criminal case, as I stated previously and in my letter, the government has absolutely produced everything that we have seen to defense counsel. I'm not aware of any other thing that we have not produced. They have not made the threshold showing of relevance or materiality under Rule 16 to have those documents in those computers.

Second of all, in the two cases I cited, and there are more in this circuit, the cost is on the defendant to produce and copy those. As the defendant himself told this Court last time, the cost of duplicating and searching these supercomputers with terabytes of memory in them may run somewhere in the neighbor of 10,000 to \$20,000.

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I don't know whether the defendant is now prepared to represent to this Court that he is prepared to pay those expenses in addition to any necessary costs incurred by the government in having agents present to ensure the proper downloading and copying of those electronic documents.

For all of these reasons, I simply don't think it is relevant to the defense in this case. I would urge the Court to deny the request for additional discovery.

THE COURT: As I understand it, indeed looking at your letter, you say Rule 16's clear import is that defendant must pay the cost of copying documents legally held by the government, which indicates it does come within Rule 16. I just got your letter half an hour ago and I haven't had a chance to check the cases.

But if it says Rule 16's clear import is that defendants, at least nonindigent ones, must pay the cost of copying documents legally held by the government, why isn't Mr. Rubinstein's proposal to hire an expert to download them, something that he would have to pay the cost of --

MR. KWOK: Because those cases presume the relevance, indeed the materiality, of the sought-for evidence, unlike in this case, in which he hasn't even reached the threshold to show the evidence that he is seeking for Rule 16.

MR. RUBINSTEIN: This is distinguishable, because these are his own records, which changes a whole plethora of

arguments. He is entitled to these records. In the days of hardcopy, I have been in cases where --

THE COURT: They haven't made copies of these things.

They may well be his records, but they are not going to use

them. It is not their intention to use them in this trial. Is

this the right forum, as Mr. Kwok says, for you to get those

back, or shouldn't you use another means of getting them back?

He doesn't seem to object to your getting it back.

It's just that perhaps it will confuse the discovery in this action to have the materials obtained in that way. He says they are not relevant to this case, and I must say that I can't see that they are relevant.

MR. RUBINSTEIN: How can he say that? He has never reviewed them. He has never looked at them. How can he possibly say something is not relevant that he has never seen? That is just disingenuous, your Honor.

THE COURT: I don't think it is disingenuous.

MR. RUBINSTEIN: I already highlighted the fact about the American Express bills in request number 3. There are backup slips that are in these computers that show what the expense is for, who was present, and what-have-you. If that is not relevant to show that this is an expense that was a legitimate expense pursuant to this grant, I think it is a Brady violation on the government's part.

I asked for the color images of the checks. There are

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two different kinds of checks that are used. Each check, depending on the color, has a different significance. We can't tell the difference, because we don't have the colored check. They can stand here and say this is what we have, this is what we reproduced, 5,000 pages, but they haven't listed one page in their response that says that something was produced that we have requested.

MR. KWOK: I did indeed do that. That is the first category of documents under my categorization of defense counsel's request. I produced all the bank statements and indeed the American Express statements that defense counsel referred to.

THE COURT: Are they colored? His point is that apparently they are not colored.

MR. KWOK: I'm not aware any of color. Again, I would reiterate the government's invitation to counsel to come in, if he wishes, to inspect the original copies that we have. I don't know what he is referring to when he mentions color copies. The originals that I have certainly are in better shape than the duplicate copies. If he wishes, he can make arrangements with our office to look at them.

With respect to the American Express statements, I have produced statements showing every charge that has been put on the company's card and the running month-to-month expenses. What he is seeking is the charge slips with ink pen signatures.

I simply think that is duplicative and imposes unnecessary costs on the government.

THE COURT: Do you have signatures on them?

MR. KWOK: We don't have those documents, and I'm not aware of how to get them, frankly, in an accessible way. I don't know whether American Express saves them somewhere.

THE COURT: If they are not in your possession --

MR. KWOK: It is not in my possession.

MR. RUBINSTEIN: They are in his possession your Honor. They are scanned into these computers and they are on these disks. He just wants to put his head in the sand and say, we don't have them because we haven't looked at them.

It's a very simple solution, with all due respect, your Honor. Give us the disks. Let us get copies of the disks at our own expense with our own expert, with their people sitting by. People make copies. They go and burn them. They burn me copies of CD's all the time and send them to me. The government does it, other lawyers do it. He is making this sound like it's a Herculean task.

I am a computer novice, your Honor, and I know this isn't a Herculean task. So I don't see why we are having this debate with the government, who is resisting us getting records that they don't know what's in the records that are on a computer disk or on a hard drive that they have never seen. We say they have them. The fact that they never looked at it or

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they haven't gotten a search warrant to look at it, so be it.

We need these in order to prepare our case.

Also, your Honor, as you see, there are three other credit cards that they have statements for. They have never provided those to us. They never provided all the correspondence between this accountant Hayes in the office of the inspector general. They haven't provided any of these things.

THE COURT: That is a little different.

MR. RUBINSTEIN: They haven't provided emails.

THE COURT: That isn't necessarily discoverable material at this point.

MR. RUBINSTEIN: But it is on our computers. We have copies of them. We want them. We're not looking to burden the government. They are talking like they are going to be burdened. They are not going to be burdened at all.

THE COURT: The last category it seemed to me was more 3500 material. Am I not right?

MR. KWOK: I think that's absolutely right, your Honor.

THE COURT: That's 3500 material. But these other things, Mr. Kwok, what about them? What about the receipts? If they are on the computer and scanned in, why aren't they documents which may contain evidence that somebody other than Dr. Karron made these expenditures or got these things? You

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say you don't have signed copies.

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MR. KWOK: Most of the information that Mr. Rubinstein is asking for is already presented in a different format by the government. Last time he referred repeatedly to these Quicken bookkeeping databases.

THE COURT: You say they are in a different form. Supposing there are differences between the two? Supposing the Quicken book is different from the American Express records?

MR. KWOK: First of all, there is no way for me to verify, because the government has not seen these documents. And it is not as easy as Mr. Rubinstein makes it out to be, which is why I come back to Rule 16 and the relevance and the materiality standard. These are not your usual desktop computers.

We seized over 20 computers, and each of those computers has a lot of memory in it. Unless the defendant can pinpoint which computer and in which directory they are saved under, I have spoken to an agent who is more knowledgeable than I am about how these computers work, and it is really not as easy as it sounds. It's not just a matter of just burning the We have to search for them. It sounds like these may not be saved in one place under one directory.

In light of the lack of relevance --

THE COURT: If we don't have a accurate map here, how can I fashion an order that would protect you and protect them

so that whatever search had to be made for these documents was made in a way that doesn't harm either party?

MR. KWOK: I think the Court does not need to reach that issue, because there has been no showing of materiality under Rule 16 that this is relevant to the defense.

THE COURT: It gather what you want is a full-fledged affidavit with backup and things like that. You are entitled to it. On the other hand, I don't know how you're going to respond to that. When he has requests for these color-coded checks, for instance, which you haven't seen, you're going to have to go through and search them, I suppose all through the 16 big computers, and you're going to have to file opposing affidavits based on that search. By the time you get done, we'll have two or three months go by. That's fine, but what's the alternative? Is there a better way to do it than going through that that doesn't harm either party?

MR. KWOK: Here is a proposal. If Mr. Rubinstein insists that he that these materials are relevant, and he does make that representation to the Court, one solution that is simplest I think would be for Mr. Karron to tell the government under what computer.

As I understand it, they are all numbered, all these computers have numbers posted on them. Number X computer has these documents and they are stored under this directory under the C drive, under this directory labeled Y. At that point if

the defendant is willing to bear the costs, the government will send an agent to retrieve those documents.

Once he can tell us specifically not just what he wants but where in those computers these electronic documents are stored, I think that would take care of the logistical difficulties that the Court mentions, if the Court is inclined to allow the defendant some leeway to go beyond the dictates of Rule 16.

MR. RUBINSTEIN: Judge, there is no backup.

THE COURT: It's not so much trying to get leeway as that there seem to be a dispute about the validity of some of the documents.

MR. KWOK: I understand.

THE COURT: If there is a dispute about the validity of some of the documents, then it seems to me you want to have both sides present when the search is made for whatever will validate the document or evaluate the document.

MR. KWOK: Right.

THE COURT: I do think the government doesn't want to run everything on the hard drive on 16 large computers and produce thousands and thousands and thousands and thousands of irrelevant documents that Mr. Karron really doesn't want. He wants certain documents, not others, don't you agree, Mr. Rubinstein?

MR. RUBINSTEIN: That's correct. The problem of

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identifying the documents, where they are stored, since they have all of the computers, they have all the lists of everything that he has there. He'd have to access it. He'd have to someone, not himself but someone else, access the computer to find where those documents are within which computers. He probably has a general idea.

THE COURT: I suppose there is an index, isn't there, in the computer?

MR. RUBINSTEIN: Yes. I would think in the computer. But they have the computer.

MR. KWOK: Again, as defense counsel says, these are his documents. Presumably he would know where they are stored. I know where I store my documents pertaining to this case. It's under a certain directory. So if he would provide that information to the government.

The last thing the government wants is to get into a dispute at the site with the agent and the representative from the defense about whether this document is relevant to this case. So I want to have a list of all the documents that he wants and the places where they are stored. Then we can send an agent with a representative from the defense to go to the site to download exactly those limited universe of documents.

THE COURT: Does he have a printout of the index?

Does he have a printout of the index on the computer, or is it all something that is kept on the computer? Does either side

know?

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MR. RUBINSTEIN: No, he doesn't have a printout, Judge. It's one thing for the government to say --

THE COURT: He doesn't have a printout, OK.

MR. RUBINSTEIN: He didn't know he had this case.

There are documents in various places that relate to this case.

THE COURT: But the index will show that, right? He has an overall index for his documents for his filing system?

MR. RUBINSTEIN: I'm sure that each computer has an index somewhere for all the documents separately, not necessarily one. I don't know the answer, Judge, of whether or not there is one particular computer that lists every single document and which computer is on it.

THE COURT: He must know how to access it.

MR. RUBINSTEIN: Absolutely.

THE COURT: Why can't you go through something like this: First, you will give the government the information on how to access the index; then they will produce the index in hardcopy for him to mark those items that he wishes to access. I would think the computer expert could retrieve those documents at that point, at his cost. Each side will have a copy if you want to have a copy, so you'll have a record that indeed these documents came from these computers, each of those computers. Is that kind of thing workable?

MR. KWOK: I'm not certain whether there is an index

1 | in the computer to enable that solution.

THE COURT: Dr. Karron will have to tell us.

MR. KWOK: I think the easiest way, frankly -unfortunately, Dr. Karron isn't here -- is for him to tell us,
if he were sitting in front of the computer, how would he
access these documents that he wants. Presumably, he saved
them so he could retrieve them at some later point.

He could tell us on this computer, if I were sitting in front of it, this is where I would go. If he can tell us that information with certain specificity, I'm more confident that the expert will be able to find them. But if they were just to say, I want XYZ documents, without telling us where to find them, it is simply an exercise in futility, I believe.

THE COURT: I see the problem. It's like fishing in the deep blue sea.

MR. KWOK: It is indeed.

alternatives. I was suggesting that if he would tell us how to access the indexes he needs, then the indexes would be produced to him. Mr. Kwok says there might not be an index. Maybe he can tell us without an index or maybe he can tell us the steps:

Go to the index on the computer, then press buttons such and such and so and so for access to the necessary files, and then press "print" to print.

MR. RUBINSTEIN: I would hope that that is available,

1 | your Honor.

THE COURT: He ought to be able to tell us the mechanism.

MR. RUBINSTEIN: Absolutely.

THE COURT: If we follow one of those things, it seems to me, and then they don't have to fish around in those computers trying to find what they have not looked at and haven't done anything to save, there won't be such a waste of time by people trying to comply.

But I do think they should get a copy of what he gets, because you want to be able to know that indeed the documents did come from the computer and not from some other source, and there will be questions about the authenticity of the documents if you do it some other way.

MR. KWOK: We'll certainly make a copy and ensure that the copying will not alter in any form the content of those documents.

I understand that defense counsel is agreeing to bear the cost of the process. I don't know how much it is going to cost. If his estimate is correct, it could be nontrivial.

THE COURT: I don't hear Mr. Rubinstein.

MR. RUBINSTEIN: As your Honor may recall, we are in the process of making a Monsanto application to have property released so that Dr. Karron can have those resources and pay his lawyer's legal fees. The government is well aware of that.

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That's the first I've heard of it. THE COURT:

MR. RUBINSTEIN: In the alternative, under CJA, he may

well be entitled to it.

The bottom line is that we will make every effort to shoulder that expense. We don't expect the government to do it. Whoever we produce for the government will be someone I'm sure who the government will find to be of outstanding credentials and reputation in the computer field.

THE COURT: I don't want to have the matter delayed for a period of time. I want there to be some action here in terms of the parties not only having the discovery but also having access to whatever documents they think may bear directly on their defense.

When is Dr. Karron coming back?

MR. RUBINSTEIN: He will be back on Monday, your Honor.

THE COURT: Can we get something done here by Wednesday?

To have the copying done?

THE COURT: To have him give you the directions.

MR. KWOK: As soon as we receive those directions and if they are specific enough to be useful to tell the agents where to go, then the government would make every effort to expedite the retrieval and copying process. I don't want to delay this case any longer than the Court does. I was hoping

18 788rkarc 1 for a trial date before this motion came up. 2 We will make every effort to expedite that once we get 3 the list from the defendant. 4 THE COURT: Is that satisfactory? Why don't we have a 5 conference next week sometime if necessary. 6 MR. KWOK: Can we set a date by which the defendant 7 will provide that instruction? 8 THE COURT: I was saying by Wednesday. 9 Thank you, your Honor. MR. KWOK: 10 THE COURT: That would be the 15th. 11 MR. KWOK: That's correct. 12 THE COURT: Depending on what those instructions are 13 and assuming they are satisfactory, how long? You can't tell 14 how many documents are involved or how lengthy the searches would be. 15 MR. KWOK: How about a control date a week from that 16 17 point, so if we have any issues with the requests, we can have them resolved. 18 19 MR. RUBINSTEIN: I'm going to be away. My daughter is getting married in Las Vegas the week of the 20th. 20 21 THE COURT: Your daughter is going to get married in 22

Las Vegas? You shouldn't consent to that.

I have no control, Judge. As a MR. RUBINSTEIN: matter of fact, August in Las Vegas is too hot. She's 41 and she says she's liberated.

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1 She is probably very liberated. THE COURT: 2 MR. RUBINSTEIN: I can tell you that she is being 3 married by an Elvis Presley interpreter, so I have nothing else 4 to say about this wedding. I'm invited and I'm going and I'm 5 doing all the right things, Judge. 6 MR. KWOK: How about two weeks from the submission 7 date, which would take us to the 29th of August? 8 THE COURT: 22nd. You're going to be away how long? 9 MR. RUBINSTEIN: I would be away for a week. I would 10 ask your Honor that we put it down for Monday the 27th of 11 August. 12 THE COURT: All right. 13 MR. RUBINSTEIN: If we can't resolve things by then, 14 we will have a problem. I can always be in touch with Mr. 15 Kwok. 16 THE COURT: If you have problems early next week, ask 17 for a conference. 18 MR. KWOK: Certainly. So August 27th is the control 19 date. 20 THE CLERK: 4 o'clock. MR. KWOK: 2.1 OK. 22 MR. RUBINSTEIN: Sure. 23 THE COURT: We expect Karron to have given something 24 to Mr. Kwok.

MR. RUBINSTEIN: We intend to give it to him by the

1 | 15th.

THE COURT: Right. If he can't or for some reason we have to approach it another way, maybe you guys can work it out.

MR. KWOK: Yes. I'll certainly look at the list and discuss with the agent and discuss with defense counsel to see whether it is a workable plan. If we can work it out, I'll produce the documents requested as expeditiously as possible. If not, we'll try to schedule a conference. If not, we will be in front of the Court again on August 27th.

THE COURT: My trial for next week is off. Anything else we should take up?

MR. KWOK: I think time is being excluded. But just in an abundance of caution.

THE COURT: Time is excluded until the 27th if it hasn't been excluded already, August 27th.

MR. KWOK: Thank you, your Honor.

MR. RUBINSTEIN: Thank you, your Honor.

(Adjourned)

78THKARC 1 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK 2 3 UNITED STATES OF AMERICA, 4 07 Cr. 541 (RPP) v. 5 DANIEL B. KARRON, Defendant. 6 7 8 New York, N.Y. 9 August 29, 2007 4:20 p.m. 10 Before: 11 HON. ROBERT P. PATTERSON 12 District Judge 13 APPEARANCES 14 MICHAEL J. GARCIA 15 United States Attorney for the Southern District of New York CHI T. STEVE KWOK 16 Assistant United States Attorney 17 RON RUBINSTEIN Attorney for Defendant 18 19 20 21 22 23 24 25

(In open court)

THE DEPUTY CLERK: United States v. Daniel Karron.

Is the government ready in this matter?

MR. KWOK: Yes, we are. Good afternoon, your Honor. Steve Kwok for the government. With me at counsel table is David Ton from the U.S. Department of Commerce and Matthew Schwartz from our civil division.

MR. RUBINSTEIN: For the defendant, Ron Rubinstein. Good afternoon, your Honor.

THE COURT: Good afternoon, Mr. Rubinstein and good afternoon, Mr. Karron.

I think there was a letter that I received from the government requesting the conference, am I right?

MR. KWOK: I don't know. We sent a letter, but we did request a conference I think through a telephone call to the deputy.

THE COURT: Have the parties been able to work out the procedure so we can make sure we don't have any more legal time or what have you in this matter than is necessary?

MR. KWOK: Well, I think we have moved closer since last time we were in front of you. The government is trying to be accommodating. So I think what we are proposing is to do the search that the defendant is asking for. We simply insist that it be done by a firm that is competent to conduct the examination and the duplication in a way that is forensically

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sound. I have suggested a name of that firm to defense counsel and I have given him the web site. If that is satisfactory to them, we are ready to have that firm be the intermediary to duplicate the hard drives to get all the documents that Mr. Karron claims are necessary for his defense.

I just want to put two things on the record to be clear. First is, I think there is no dispute that the costs would be on the defendant. I think last time they agreed with that. The second is simply that whatever is duplicated the government be provided a copy and be able to inspect the documents as Mr. Karron will have a chance to once those copies are provided to him.

With that, we simply again just want to make sure that it is done in a proper way and we have an expert ready to go if that is fine with the defense.

THE COURT: In a way that it protects the security of the documents and in a way that Mr. Karron gets the information he is seeking.

MR. RUBINSTEIN: Judge, I hate to waste the court's time.

THE COURT: I just want to be sure you have a way to do it.

MR. RUBINSTEIN: Apparently our ways to do it, my recollection was that the government had given me one name and said that they were going to have others and they were going to

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bring an expert here for this conference to lay out to your

Honor what it entails so we can see, since the cost is going to
have to be borne by Dr. Karron, as to what we are talking
about. That is why I say to you I don't like to come to court
where the parties aren't on the same page.

It was my understanding Mr. Kwok was going to supply us with a number of different experts so we can check out, because we have our own experts that we would like to make available and have our experts talking to the people that the government suggests and work from there. I didn't know that the one they suggested was the only one that was available.

MR. KWOK: If I may, your Honor, I just want to clarify. We do have an expert --

THE COURT: Let me see if I haven't got the letter here that I read. You ask for the conference to allow the government expert knowledgeable about computer forensic procedure to be present at the next status conference to answer any questions I may have. But I don't have any questions.

My concern is one that the parties agree on a procedure that will, one, be able to establish that whatever is taken off the hard drive or software is taken from the particular computers that belong to the defendant and be sure that those documents are in fact documents that don't come from some other place. That is what I want to be sure occurs.

MR. KWOK: Sure, your Honor. This is the expert that

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THE COURT: I am no computer expert.

MR. KWOK: He is the expert if the court has any questions.

THE COURT: The expert is here, and I gather that Dr. Karron is an expert or is very familiar with his computer, computers, and I think he is an expert. I may be wrong.

THE DEFENDANT: Are you asking me?

MR. RUBINSTEIN: He built these computers.

THE COURT: So therefore, it seems to me that you ought to be able to reach an agreement.

I don't want to put this matter over, Mr. Rubinstein, because I have a two-week trial coming up starting Tuesday and I am not going to be available for anything lengthy during that period. I also happen to be the Part I judge. So I really have my work cut out for me. I am trying to get relief on that, but still there is a limit to my availability in this time period.

So what is the matter with the proposal that Mr. Kwok is proposing, that Mr. Karron designate the computers in question and propose a method of obtaining the materials he wants, he can search throughout them. There is no problem on that as long as there is someone who can monitor that in fact whatever he takes out are documents that were on the computer.

MR. RUBINSTEIN: We don't have a problem with that

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aspect of it, Judge. As a matter of fact, I assured the government that anything that was taken we would duplicate, it would be duplicated, and we would only have a copy. We don't want the original, so there is no question of the integrity of whatever is taken.

The question was, they gave us the name of one firm.

It was my understanding -- maybe I misunderstood Mr. Kwok -that there were other firms that could do this work, that they
were going to have their expert here, that they were going to
share with us the names of firms so that our experts could talk
to their experts and see -- first of all, there is possibly an
extraordinary cost involved here.

THE COURT: That was my next question. Are you concerned that the government's expert is going to be so costly that it is a problem as opposed to yours? Because if they go around to three or four experts, it seems to me it takes time, and why is it necessary to have more than one?

MR. RUBINSTEIN: Well, we want our expert to speak to whoever it is that the government is suggesting and see if that person could be involved in the process so we make sure of the integrity of what is going on. So far they have given us the name of one company.

THE COURT: All right. As long as that is what his role is going to be and he agrees to those responsibilities, why isn't that satisfactory?

MR. RUBINSTEIN: It is. I want the names of other -- they gave us one.

THE COURT: Why do we need more than one?

MR. RUBINSTEIN: Because that is what they told me they were going to provide to me, so I can have the expert get in touch with these people because I thought that there was going to be a number of firms in the D.C. area, Washington, D.C. area, who have the ability to do what we are attempting to do.

THE COURT: Is everything down in Washington, D.C.?

MR. RUBINSTEIN: Yes.

MR. KWOK: Yes, it is. The computers are in D.C. and the expert is in D.C.

If I may just clarify about the multiple experts. I apologize to Mr. Rubinstein if I was unclear. We were going to try to see whether we could get more than one after I sent him the information on this particular expert, but according to our government expert at the Department of Commerce, he wasn't able to come up with more names that he could trust. Apparently it is a small universe of people, and we just feel like since this --

THE COURT: This is a man they have confidence in is what he is saying. If they have confidence in this man, isn't that satisfactory from your standpoint?

MR. RUBINSTEIN: If I knew that we were only going to

deal with one firm, I would have checked out that one firm. I have been waiting for a list of firms so that we could do some due diligence.

THE COURT: How long will it take you? Is the name unfamiliar to you all? If it is, how long do you need to check it out? Today is Wednesday. Can we do it by Friday? I hate to put time pressures on you. If we can't, we can't.

MR. RUBINSTEIN: Judge, finding people this week is not an easy thing to do.

THE COURT: All right. I will go along with that. Let's check out this one and get back to me as to whether or not it is not satisfactory to get ahead.

How long do you think it will take? Another week, ten days?

MR. RUBINSTEIN: A week tops, your Honor. I am sure everybody is back at work on Tuesday, the 4th. So I will be ready by Friday, no later than Friday, a week from Friday, which I think is either the 7th or the 8th.

THE DEPUTY CLERK: Friday, the 7th.

THE COURT: Yes. All you have to do is tell me it is OK.

MR. RUBINSTEIN: Right.

THE COURT: If the two parties say it is OK, then --

MR. RUBINSTEIN: We need an estimate.

THE COURT: -- we have made progress.

MR. RUBINSTEIN: Good.

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What sort of progress I don't know, but we THE COURT:

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have made progress.

You better do it by letter, and also it would be good if you give me a time frame for this to be completed because it seems to me we ought to get it completed relatively promptly. That just means you have to get your thoughts in order so that you know -- I think Dr. Karron knows what he is looking for and where he can find it in all likelihood, and I won't say he can find it exactly because I don't know anything about finding things on a computer or what system he used.

MR. RUBINSTEIN: Unfortunately, you can't Google this stuff, your Honor, and that is the problem.

THE COURT: By then you ought to be able to give me a time frame so that I can be assured that he has had access to the documents he wants for his defense.

> MR. RUBINSTEIN: Absolutely.

THE COURT: So give me a time frame so that I can mark it on my calendar and we can have a conference about where we stand on the discovery situation as soon as possible. You may have motions to make. I don't know what you are going to have.

MR. RUBINSTEIN: Maybe the government has a suggestion. They have talked to these experts.

THE COURT: I have to have some control. If I do not, I am a delinquent judge. I don't want to be one of those yet.

1 MR. KWOK: Thank you, your Honor.

MR. RUBINSTEIN: I don't know if this is being disrespectful, but this is the first time I ever remember you not being on the bench exactly at the time-appointed hour. So I don't know.

THE COURT: That is me being on the bench. What I have got to do is be sure that you get a schedule and we get this matter tried or disposed of.

A letter by next Friday, the 7th of September, and I would hope that it wouldn't take you more than a couple of weeks to complete your discovery.

MR. RUBINSTEIN: We will know from the experts, Judge, but I will get working on it tomorrow.

MR. KWOK: Thank you, your Honor.

The last item on discovery, I just want you to know that I will turn over supplemental discovery to the defendant, since he asked for in his discovery letter previously, notes from the CPA auditor. I asked my agents to go back to their files to turn over every scrap of paper they have, and so I intend to produce supplemental discovery to the defense.

THE COURT: All right. Thank you very much.

MR. KWOK: The only other item I think on the agenda for the government is we want to apprise the court of a civil complaint that the government will be filing, which is why I have my colleague from the civil division here.

THE COURT: You filed a civil complaint in this matter?

MR. SCHWARTZ: Yes. Good afternoon, your Honor. Matthew Schwartz, also from the U.S. Attorney's Office.

We are intending to file a civil False Claims Act complaint alleging essentially the same nucleus of facts in this case. I wanted to put that on your Honor's radar screen because we anticipate, unless we are able to come to some agreement with Dr. Karron or Mr. Rubinstein, if he is retained in the civil matter, injunctive relief in conjunction with our civil complaint.

With your Honor's permission, we will mark the civil action as related to this action so they could be consolidated or at least dealt with by someone who knows the facts.

vague recollection that there is some suggestion by the Court of Appeals that it is better not to handle both the civil action and the criminal action at the same time. I have a vague recollection that there is some sort of -- you can apply for it, but that is my role, is to determine whether it is appropriate for me to handle both the civil and the criminal.

MR. SCHWARTZ: That is absolutely our understanding as well, that it is by no means mandatory that the two be designated as related. But I think given the likely proceedings in this case, especially the application for

injunctive relief we anticipate making, it makes sense. I wanted to at least preface that issue so that when the civil complaint comes your way, you are aware of it.

THE COURT: It may have to be assigned to another judge. All right. You might tell me the case so I won't have to look it up, too.

MR. SCHWARTZ: We will put in a letter with our complaint, your Honor.

THE COURT: Thank you.

MR. KWOK: I don't know whether we have a control date, but I just want to exclude time for discovery process.

THE COURT: Time is excluded certainly until September 21st.

MR. RUBINSTEIN: Thank you very much, your Honor.

MR. KWOK: Thank you, your Honor.

(Adjourned)

	7A9JKARC	Conference	
1	UNITED STATES DIS SOUTHERN DISTRICT		•
2	SOUTHERN DISTRICT	OF NEW YORK	• .
3	UNITED STATES OF	AMERICA,	
4	v.		07 Cr. 541 RPP
5	DANIEL B. KARRON,		
6	De	efendant.	
7		· · · · · · · · · · · · · · · · · · ·	
8			
9			October 9, 2007 3:16 p.m.
10			J.10 p.m.
11			
12	Before:		•
13	I	HON. ROBERT P. PATTER	SON, JR.,
14		•	District Judge
15			
16		APPEARANCES	
17			
18	MICHAEL J. GARCIA		
19	United State	es Attorney for the strict of New York	
20	CHI T. STEVE KWOK		
21	TIBBLE COLL	reca seaces necesticy	
22			
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23	RON RUBINSTEIN,	defendant Karron	
23		defendant Karron	
		defendant Karron	

Conference

1	(In open court)
2	(Case called)
3	THE COURT: How do we stand first on the discovery
4	situation?
5	MR. RUBINSTEIN: Your Honor, I think discovery has
6	been held in abeyance awaiting our ability to retrieve the
7	information from the computers that were seized by the
8	government. That is what this time has
9	THE COURT: But we had a procedure set up. What is
10	the status of the procedure?
11	MR. RUBINSTEIN: The status of the procedure is as
12	follows, your Honor:
13	The company Digital First that was recommended by the
14	government is satisfactory to the defense. I have talked to
15	the CEO of that company. He has advised me of the following,
16	your Honor:
17	There are two computers that are in question that have
18	to be they need what is called forensic imaging, where they
19	bring out the data that is on the computer without changing the
20	date or the time stamps that are on any of the data. They
21	bring out what they call a clean environment.
22	The CASI I, which is one of the machines, has what is
23	called three terabytes of information and 35 hard drives. In
24	other words, these are converted computers. They're not your
25	standard TRM or what have you The CAST I has 35 different

hard drives on it.

Digital First said this is one of the ugliest setups they've ever seen. The bottom line is, to cut to the chase, CASI I -- by the way, your Honor, a terabyte, as explained to me, each terabyte would be the equivalent of a tractor-trailer full of paper.

CASI 18, which is the second machine, which is a newer machine, has 20 hard drives, and First Digital advises me that they believe in one week, in a 40-hour week, they could create this duplicate that we need including the spreadsheets so that we can find the information where it is individually in the computer. It would take about a week and a half to do CASI 18. So we're talking about, let's see, outside figure, three, three weeks.

They get \$350 an hour. They require one week's payment in advance before we begin. Your Honor is probably aware of the fact that we have submitted a request for a Monsanto hearing because Dr. Karron has virtually no funds.

The government and I were discussing this matter, and to see if we can resolve this without a Monsanto hearing, the government will permit a second mortgage on Dr. Karron's apartment. It would subjugate the government's lien on a forfeiture, and also we have talked about the fact that putting up part of the money that is obtained in the refinance with the government so that they are protected to a degree on any

forfeitures should they be entitled to forfeiture.

That reality is the current problem that we have is being able to get the funds to go forward with this project.

THE COURT: I thought that the procedure that you were going to go through was going to be a procedure whereby there would just be an index of what was on each of the computers and that Dr. Karron was going to indicate where on that index, what parts of that index he wanted to look at for his defense.

MR. RUBINSTEIN: Apparently, in order to do that, from what First Digital, Digital First tells me is they have to make an original copy and then they create a spreadsheet. Then from the spreadsheet, we can determine what we need and they'll extract that part.

THE COURT: There is no inventory on -- Dr. Karron must be aware of how to retrieve the information he wants.

MR. RUBINSTEIN: Once he gets an index, he can determine what it is, but this stuff is just stored in such a manner that there is no index on it, and so you can't just find something until they download everything they have there. This is what I'm being told, your Honor.

THE COURT: I thought we were going to go by subject matter, and he was going to bring the subject matter they wanted and then the subject matter would be produced to them.

In this way, I have no idea what it will cost to get it, and it seems to me that we aren't pursuing the matter in a

Conference

very efficient manner, but I may be naive. I am not a
computer have no knowledge of the interior workings of
computers and I don't believe I should try and gain that
knowledge.
I don't think Mr I'll wait till you finish.
(Pause)
MR. RUBINSTEIN: Your Honor, the problem is that Dr.
Karron, the way he filed things, he had a daily tickler and he
just filed everything that would happen that particular day.
THE COURT: I understand.
MR. RUBINSTEIN: The expenses and what have you.
THE COURT: You gave me an argument as to which I
bought, which was that because of certain facts, there were
things that were relevant to Dr. Karron's defense
MR. RUBINSTEIN: Correct.
THE COURT: in the file, and so he had to have
access to those things. I've forgotten exactly what they were
but I guess I can get the transcript out and look at it, but
those things should be relatively easy to determine and
relatively easy for this expert to find just the way if Dr.

If I go back to the transcript, I suppose I can find exactly what those things were, but by now that was supposed to have been done in September, and here we are in practically mid-October. That was over a month ago that I ordered that.

Karron was seeking to find them.

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Conference

I don't see that there is any progress at all. It seems to me that there is no progress, and I am afraid it may be because you and I, Mr. Rubinstein, aren't as computer literate as we might be and that this government expert, you say, is satisfactory to the defense, but -- I'll have to go back to the transcript to see exactly what it was that you asked for and that I felt could be relevant to your defense, but it has to be material relevant to your defense.

MR. RUBINSTEIN: We are trying to establish through these records that expenses that the government claims were inappropriate with criminal intent, were, in fact, spent on matters totally related to the grant.

For instance, if Dr. Karron went to dinner and he went to dinner with two other people that were related to grant matters, he would have notations in these records showing that he went to dinner and at least, at least an indication of what the purpose of the meeting was to show he never had any intent to inappropriately take funds that were grant-related.

There is no question, your Honor, in this case -THE COURT: He knows who he went to dinner with.
MR. RUBINSTEIN: He doesn't know, Judge.

THE COURT: He knows who he went to dinner with and why those people would be relevant to this case. So it seems to me that if you want to determine that, you can determine that with names, signature, what have you. I don't see why

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Conference

1	this business of a spreadsheet and all seems to me to be just
2	why the government opposes this thing in the first place.
3	Now, maybe I am wrong, but it sounds to me as if we
4	are getting into a very, overly prolix method of achieving a
5	result, and I've got to see better progress than that because
6	one thing, I can't tell and have any idea what the cost of this
7	is going to be.
8	MR. RUBINSTEIN: No. I said that the
9	THE COURT: Therefore, how do you know what is a
10	reasonable charge in a Monsanto hearing?
11	I won't be able to make any sort of determination of
12	that sort unless you come up with something a little more hard
13	information. This is all too fuzzy to me.
14	MR. KWOK: If I may be heard, your Honor?
15	THE COURT: Wait till they finish their consult.
16	Mr. Kwok wanted to say something. I don't want him to
17	talk while you were talking, Mr. Rubinstein.
18	MR. RUBINSTEIN: Thank you.
19	THE COURT: Go ahead.
20	MR. KWOK: The government's position has always been
21	that these materials, we just don't see a way how it is
22	relevant to his defense. We have always maintained the
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defense are the materials that we will use in the government's

case in chief and we are aware of no exculpatory evidence or

position that the discovery that we have produced to the

Conference

Brady materials or Giglio materials in the computers that are in the government's possession.

Now, the government has tried to accommodate the defense position by exploring whether this path is workable. As your Honor has indicated, it seems like it is simply not a workable or effective path to go down. Even assuming everything goes well, according to Mr. Rubinstein, we are talking about three weeks of copying, duplication and cost along the lines of upward of \$30,000.

I am sure you know or everyone who has even some dealings with computers knows things like this don't go smoothly, I am sure there will be obstacles in the course of this which will fill the cost delays.

I have produced the materials Mr. Rubinstein referred to such as the spreadsheets, the Quicken notations where the defendant would note what he was doing that day, the charges that he put --

THE COURT: I am sorry. I don't follow that. You say you've done what?

MR. KWOK: As part of the discovery, I have produced hard copies of the kind of spreadsheets that Mr. Rubinstein has just referred to, namely, if he goes to dinner and he put a charge of like, say, a hundred dollars on the card, on the company, company card, he would note on the spreadsheet the dollar amount and sometimes the purpose of the meeting or the

Conference

1 | dinner.

THE COURT: When you say you put them on spreadsheets, why do you use that term?

MR. KWOK: Because it is on a, it is essentially a table form, but it is on the computer.

THE COURT: So it is a spreadsheet taken from the computer?

MR. KWOK: Right. The reason we have it is because before the government got involved, there was an internal audit done of the company's finances through an auditor, and she has turned over all her papers to the government to support the result for the audit.

THE COURT: I understand your papers. You're suggesting these are spreadsheets. Are these spreadsheets amongst or exhibits amongst her papers?

MR. KWOK: Exactly, these are the supporting documentations taken from the auditor. The auditor had access to these spreadsheets Mr. Rubinstein related to, and in turning over her audit report, she has also turned over the underlying documents that she looked at, and part of those materials are precisely the daily notations Mr. Rubinstein is talking about.

To the extent those materials are relevant, and I don't think they are, but to the extent they are, they are already in the defense position. They are turned over. I don't know what other materials they're talking about in those

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Conference

computers that make it worth the trouble and expense and time 1 2 and delay of retrieving them. 3 THE COURT: I see. I haven't fully understood that 4 the auditor's work papers included spreadsheets from the 5 computers that you referred to. Are they also marked to 6 whether their source is CASI I or CASI II? 7 MR. KWOK: Where they came from, but those papers, all 8 the papers I have seen and have possession of I have turned 9 In fact, those are precisely the materials I have made a 10 point of to produce again as supplemental discovery just to make sure that that every page I have was turned over to the 11 12 defense, and that was already done. 13 THE COURT: Let me ask you one further question. 14 government's case, as I understand it, is based on this audit by the auditor and the revelations or the conclusions drawn 15 16 from her work papers? 17 Correct, with one caveat. She is one of MR. KWOK: 18 the people who have looked into the finances. The government 19 has also, the agency that provided the grant has itself looked 20 into the finances. 21 THE COURT: There are two audits?

MR. KWOK: There are two audits, I think it would be fair to say.

THE COURT: Are both audit papers available to the defense?

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Conference

1	MR. KWOK: Yes, they are.
2	THE COURT: Do both audits include the spreadsheets
3	from the computers?
4	MR. KWOK: I don't know the extent to which the
5	government's auditor looked at or relied on the audit of the
6	internal auditor, but those materials were available to both
7	audits.
8	THE COURT: If you don't know the extent, it seems to
9	me there are charges here, as I understand it, that these are
.0	unauthorized expenses
.1	MR. KWOK: That's correct.
.2	THE COURT: under the grants.
.3	MR. KWOK: Right. The reason I said that, I am not
4	sure whether the extent to which the government auditor relied
.5	on the papers of the internal auditor is because the
.6	government's understanding of the grant was pretty clear cut.
.7	Using an example Mr. Rubinstein referred to earlier,
-8	for example, the dinner, it is clear I think under the grant
.9	rules that it doesn't matter who he was going to dinner with.
0.	Those expenses are simply not covered by the grant because they
21	are
22	THE COURT: They're not?
23	MR. KWOK: The grant only covers direct research
24	expenses, like you can pay your people doing research for you,
, ,	you can pay for the approved inventory of equipment things

7A9JKARC Conference 1 like rent, mortgage, home renovation, even internet services, 2 dinner, meals, those things are not covered. 3 So I think it was clear in the mind of everybody, including the government auditor, that these expenses are not 4 5 approved, so there might not have been any reason to go any deeper than that once it has been ascertained what the nature 6 7 of the expenses are. THE COURT: Is the grant document clear on its face 8 9 that --10 MR. KWOK: I think there are. If I understand Mr. 11 12 13

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Rubinstein correctly, I don't think they're disputing what the terms of the grant is. The debate has always been what has been the defendant's intent or state of mind at the time those charges were incurred. I think it is indisputable that the terms of the grant prohibit the money to be spent in this way.

The only question open I think at trial would be what the defendant's state of mind was, and I don't think that these papers will be probative on that question.

THE COURT: Mr. Kwok, going back to Mr. Rubinstein's example of a dinner with two other gentlemen or women or whatever, and discussing having dinner with them and charging the dinner you say is not valid under the grant?

MR. KWOK: Exactly, your Honor. To prove that the defendant, for example, had the requisite intent, we would prove, for example, that he had multiple conversations with the

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agency people, with his own internal employees about whether these type of charges would be allowable under the terms of the grant. He was repeatedly told no and, nonetheless, kept incurring these charges again and again over a period of time.

That is how the government would prove intent, and I don't think these papers in these computers, if they exist at all, would go to that question.

THE COURT: All right.

MR. RUBINSTEIN: Your Honor, accepting the government's position that the issue is the intent, all right --

THE COURT: Intent or --

MR. RUBINSTEIN: -- in order to defend Dr. Karron, we don't intend to defend this case on the grounds that there was X amount of money that was allocated under the grant for employees and he had volunteers, so he didn't have to pay them money. So he spent it on equipment, which was overbudget.

The question is, and that is why in these dinners -THE COURT: Spent it on equipment?

MR. RUBINSTEIN: For the grant in order to do his project. So technically he wasn't within the four corners of what the grant money was supposed to be for, but the bottom line is the defense in this case is that he spent all of this money for the legitimate purpose of fulfilling what the grant was for in order to accomplish that end.

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This information --

THE COURT: If he had these expenses and what have you, he knows what they are and he can, by having a search made on the computer for those expenses, whichever ones he claims he wants, be it the refurbishing of the apartment or what have you, or buying some equipment that he feels was serving of improving the grant, he can locate those, those are locatable and can be produced to him.

Then he will have in his hands whatever he needs for his defense that, oh, well, it's true that this money didn't go for direct salaries for employees the way the grant says, but I intended that the equivalent would be produced for the government.

They got their money's worth because I did these other things for them, and that can be his defense, but he doesn't need to have a spreadsheet to go through all of these things as far as I can see. All he has to do is isolate what the defenses are that he feels, although weren't authorized under the grant, were for the purposes, were for the purpose of obtaining the end result that he felt the government wanted, if that is his defense.

MR. RUBINSTEIN: If you can give me till Tuesday, I will -- is it possible for me to come back at 4:00 o'clock on Thursday, and I will make a report to your Honor, I'll speak to the computer people and get a list of those topics and see

whether or not we can streamline this.

THE COURT:

within the terms of the grant.

way, Mr. Rubinstein, the clarity of your defense won't be made clear to any member of the jury if you go in and get all of the little dinner expenses and things like that that you talked about, but if you get to the heart of the defense which, as I understand, is what we got the -- these expenditures are not technically, in the grant's language, don't conform to the

equivalent type of argument and the government got what it paid

grant's language technically, but they're the substantial

for by virtue of these expenses. It is true they weren't

It seems to me that if you do it any other

MR. KWOK: It seems to me if that is the defense, the defense is free to make that argument to the jury. They don't need any underlying documents or papers in these computers because it is clear I think based on the documents that are already provided how much is spent on what.

So if that is the argument, they could say well, it shows on this chart that X dollars were spent for a legitimate purpose, but we also spend Y dollars in excess of what was allotted to make up the difference. The numbers, the information is out there already and I don't know what is to be gained from this really onerous process and expensive process.

THE COURT: That is true.

MR. KWOK: If that is the only defense they'll make,

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1 they're free to argue that to the jury. 2 THE COURT: That is up to Mr. Rubinstein and Dr. 3 Karron how they wish to present it. I don't know the facts 4 well enough. I do see merit in your point, that the 5 substantial equivalent argument can be used, but the government 6 got its money's worth out of these expenses if they're detailed 7 enough for use by Dr. Karron. I would like to have it from you 8 if you think they are. 9 MR. KWOK: The documents I produced, yes, they are 10 because they're sufficient for the government to put on its 11 case. 12 THE COURT: It sounds as if it might be true, Mr. 13 Rubinstein. 14 MR. RUBINSTEIN: The only documents that the 15 government has, you know, when they tell your Honor that they 16 have certain documents of Dr. Karron's that they turned over, 17 those were asked by the auditor at the time for backup. So the 18 auditor was supplied certain few items. 19 The reality is that if Dr. Karron has to testify and 20 he's asked questions, he doesn't have recollections of many things that he does. That is why he is one of these people who 21 22 makes a record virtually of everything they do. They pigeon

Unfortunately, he is not a great record-keeper. These records have to be retrieved and analyzed so that he can

hole everything and there is a record somewhere.

7A9JKARC Conference 1 refresh his recollection, so that we can present a coherent 2 defense and not look like he is trying to hide anything here. 3 I asked the government if they would give -- and maybe 4 this can expedite things -- they say it is \$395,000 and he 5 probably spent money. If they can give us a list, they have 6 it, they know what their road map is, of what the 395,000 is, they probably could shorten what we have to look at in order to 7 8 properly prepare the defense. 9 THE COURT: Is the amount of the charge the 395,000? 10 MR. KWOK: Yes, that is the approximate amount. 11 THE COURT: Overcharges? 12 MR. KWOK: 13

Charges spent, improper charges. I have told Mr. Karron what those charges are since I think when --

THE COURT: Isn't there an audit or something that reflects what those charges are and they can just --

MR. KWOK: I have told him repeatedly there is going to be rent, the defendant's medical expenses.

THE COURT: Is there some document so that instead of your doing it orally, is there some document that reflects what those items are so that I would think there must be a spreadsheet or something.

There is no one document in the discovery. Essentially they're asking me to produce something like a trial exhibit to help them sort of have a pretrial of the government's case, and I am not about to do that.

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1 I can say with a great degree of confidence that the numbers will be borne out by the materials that I have already 2 3 produced in the form of checks, audit reports. THE COURT: Didn't the government produce an audit? 5 Didn't they make a claim against Dr. Karron that 6 isolated these things? 7 MR. KWOK: Precisely. All I meant to say is that 8 we're not charging every disallowed expense. If you look at 9 the audit report, the items we claim are disallowed will be on 10 there, but there will be more stuff on there than will be in 11 issue in this case because we are only going after the big 12 categories such as the ones I referred to earlier. 13 Yes, you're correct, your Honor, all the numbers that 14 we believe are disallowed expenses will be in the audit reports 15 that have already been produced to the defendant. 16 THE COURT: If it is all in the audit report, why 17 isn't that sufficient, Mr. Rubinstein? 1.8 MR. RUBINSTEIN: Your Honor, the government claims 19 that they're aware of no exculpatory evidence, but they say 20 that in spite of the fact they don't know what any of these 21 computers contain. They have this audit report and they have a 22 witness --23 THE COURT: I don't follow you, Mr. Rubinstein.

THE COURT: I don't follow you, Mr. Rubinstein. If they're making a claim based on a claim that a certain amount of -- you're only entitled to make certain charges, and their

claim is look, here's what we found, an audit that instead of charging only research salaries of associates or whatever under the grant, the language of the grant, you're making other charges and those amount to 300 and 75,000 or whatever and here it is, and here they are.

I don't see on their case that there is any exculpatory evidence that you could find in the computer because the issue is whether the expenses were appropriate or not, and the defense would be they're -- the only defense which you say is the defense they're seeking to make is that look, we gave you the substantial equivalent and we didn't intend to do anything wrong, you got the benefit of the research. The research product is good. We spent the money slightly differently. I don't know how big your rent was and got this result.

I don't see how anything can be Brady material. It just doesn't seem to fit into the Brady context.

MR. RUBINSTEIN: Your Honor, these notes would show if there was a dinner that they're claiming, what was discussed at the dinner. I understand one of the government's witnesses in this case is Dr. Karron's former accountant who was privy and aware of all of these documents and what have you, and if I'm not able to cross-examine this witness based upon documents that she was aware of that, I could use to show the jury what her thinking was and what her job was and why she filed this

Conference

1	audit.
2	THE COURT: She is the auditor?
3	MR. RUBINSTEIN: She is the auditor.
4	THE COURT: She is his accountant?
5	MR. RUBINSTEIN: His accountant, yes. She is, what I
6	understand I could be mistaken she is the star witness or
7	one of the star witnesses for the government. All of these
8	items we are talking about
9	THE COURT: I don't know if she is a star, but a
.0	witness.
.1	MR. RUBINSTEIN: She is at least a significant
.2	witness. Additionally, apparently the government is claiming
.3	today that if I could put the pieces together, I may be
-4	mistaken, is going to say she advised Dr. Karron not to do
.5	certain things, all right?
-6	So these records became very important because she is
-7	privy to all of these records. Nothing was concealed from her-
-8	THE COURT: She is probably privy to everything.
.9	MR. RUBINSTEIN: Yeah. How are we going to examine
20	her? Are we going to be stuck with her word because we're not
?1	going to have the records?
22	The government says they're not aware of any. Sure
3	they're not aware of any because they're very happy with this

cookie cutter approach and they want to look at anything in the

computers. The only thing they have is what the defense handed

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Conference

to them. We have stuff of the defense, including Dr. Karron's prior lawyers gave to the government in the hope they won't prosecute him, but this is what they have, but they don't have the rest of that stuff.

THE COURT: I don't see going about this the way you're going about it. I just can't see it.

(Pause)

MR. RUBINSTEIN: I understand what is also missing,

MR. RUBINSTEIN: I understand what is also missing, your Honor, the payroll records become very significant here. We don't have the payroll records. The payroll records are among the documents that are in these computers. They will show where monies went and where they didn't go, all right?

Dr. Karron --

THE COURT: Were they all for the research people?

MR. RUBINSTEIN: No. I am talking about, Judge, Dr.

Karron's salary. He was entitled under the grant to get X

amount of dollars. We need the payroll records to show he

wasn't taking -- he was taking less than X amount of dollars.

So that money was utilized for other grant purposes. It goes

to the heart of the man had no intent of doing anything wrong.

THE COURT: You want his payroll record? I am sure theoretically he would have access to that from just his bank account. Secondly, I don't think the government would object to pulling out his payroll.

MR. KWOK: The government's position has always been

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Conference

if they can tell us where to look for this stuff, we will pull it for them. From what I have been understanding, they're telling this court that they can't simply tell us where to locate this stuff; and, therefore, the only course open to them is to copy all the hard drives, create a spreadsheet and go from there, which is this very expensive process.

If they're able to tell me or the computer expert where precisely in these 35 or so hard drives in CASI I the stuff is located and how to access it to accommodate their requests, I have no problem providing that material.

THE COURT: The payroll, you would be glad to give his payroll records?

MR. KWOK: I would be glad to give his payroll or whatever materials they can pinpoint that would make it easy to retrieve. From what they tell me, if the description is vague, I obviously can't find it. If they can pinpoint the precise location of the exact computer the directory is stored, the name of the file, and if we can find it, we'll make a copy of it, with one copy to them and one copy to the government.

If they're just making this wholesale global request, I just don't think it is workable.

MR. RUBINSTEIN: We need the forensic Digital First to find these because there are no file names. The unfortunate thing --

THE COURT: You made an argument. Are you saying Dr.

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stored.

Conference

1	Karron didn't take the full pay and he was entitled to full pay
2	at the higher figure under the contract, and they'll provide
3	you with the payroll for Dr. Karron, and you can prove that and
4	show that he didn't take his full pay. They can do that. That
5	is not something that is a problem.
6	Then you go into this spreadsheet of everything in the
7	world that took place when it doesn't have any relevance to
8	your defense or to theirs, their case, either one.
9	MR. RUBINSTEIN: Maybe I misheard the government, but
10	I think they said they would give me the payroll records if I
11	can tell them where they can find them.
12	THE COURT: They can find the payroll.
13	MR. KWOK: I am not sure of that because I don't know
14	where in the computer Mr. Karron stored his payroll files.
15	THE COURT: Certainly the accountant, didn't she store
16	it?
17	MR. KWOK: No. These are Mr. Karron's computers.
18	What the accountant
19	THE COURT: She didn't work on the computers?
20	MR. KWOK: I don't think she did. She got a printout
21	of this stuff, and to the extent she relied on them to prepare
22	her audit, we got them and turned them over. We have no way of
23	knowing where in the computers the stuff they're looking for is

THE COURT: But she has a payroll record for Dr.

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Conference

1	Karron? That is the payroll she is relying on, right?			
2	MR. KWOK: Right.			
3	THE COURT: That is this payroll you're relying on?			
4	MR. KWOK: Exactly.			
5	THE COURT: The grant says he is, according to what I			
6	have heard here, a different figure. What is the problem? You			
7	have the documents already.			
8	MR. RUBINSTEIN: I don't have the documents already.			
9	THE COURT: You do have the documents. You were given			
10	her records which is the purported payroll. She got it from			
11	him or someone else and you say he's entitled to a higher			
12	figure. Okay, he is entitled to a higher figure and he can			
13	make his argument he wasn't stealing money, look, he took less			
14	money than he was entitled to.			
15	MR. RUBINSTEIN: My recollection of			
16	THE COURT: It is right there in her figures.			
17	MR. RUBINSTEIN: my recollection of reviewing the			
18	documents, I didn't see that. If your Honor will give me 48			
19	hours to rereview the documents, possibly Mr. Kwok could point			
20	me directly to what document it is, I'll be glad to come back			
21	in here in two days, Judge, and I will talk to the computer man			
22	about whether or not he can categorize equipment, name			
23	searches, refurbishing the apartment, medical, if he can show			

you with that kind of name search whether or not he could

accomplish something in a less costly and more efficient

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Conference

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1	manner. I am only asking the court for 48 hours to try to make
2	a
3	THE COURT: I don't know. I can't do it at 4:00
4	o'clock on Thursday because I have something else going on at
5	4:00 o'clock on Thursday, but if we can do it relatively fast,
6	I can do it at 3:00 o'clock maybe.
7	MR. RUBINSTEIN: I have a court appearance in the
8	Eastern District at 2:30. I am free all day
9	THE COURT: Friday morning?
10	MR. RUBINSTEIN: I am free in the morning.
11	THE CLERK: 9:30?
12	MR. RUBINSTEIN: 9:30 I am free, your Honor.
13	THE COURT: We have got to get this then it seems
14	to me if we know, if we can get that resolved, then we can deal
15	with your problem for legal fees. I can't really, I can't get
16	a handle on that problem of the legal fees unless I know what
17	these other expenses are going to be.
18	MR. RUBINSTEIN: See you 9:30 Friday morning.
19	MR. KWOK: Thank your Honor.
20	THE COURT: Thank you.
21	(Court adjourned)
22	
23	

	7actkarc Confere	ence	
1	UNITED STATES DISTRICT COURT		
2	SOUTHERN DISTRICT OF NEW YORK		
3	UNITED STATES OF AMERICA,		
4	v.		07 CR 541 (RPP)
5	DANIEL KARRON,		
6	Defendant.		
7	x		
8			New York, N.Y. October 12, 2007
9			9:45 a.m.
10	Before:		
11	HON. ROBERT P. PATTER	COM TD	
12	HON. ROBERT P. PATTER		
13			District Judge
14	APPEARANCES		
15	MICHAEL J. GARCIA	. 7	
16	United States Attorney for Southern District of New Yo		
17	CHI T. STEVE KWOK Assistant United States Attorney		
18	RUBINSTEIN & COROZZO Attorneys for Defendant		
19	RONALD RUBINSTEIN		
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Conference

1	(Case called)				
2	MR. KWOK: Good morning, your Honor, Steve Kwok for				
3	the government.				
4	THE COURT: Good morning, Mr. Kwok.				
5	MR. RUBINSTEIN: Good morning, your Honor, for				
6	defendant, Rob Rubenstein.				
7	THE COURT: Good morning, Mr. Rubenstein.				
8	And I see the defendant is not here.				
9	MR. RUBINSTEIN: No, I spoke to him this morning				
10	before I arrived at the courthouse. He's on his way here,				
11	Judge. I don't know if he is necessary at all or if he was				
12	required today. In an abundance of caution I like to have my				
13	clients here, but it's really just on motions.				
14	THE COURT: Well, it's just that he seems to have the				
15	knowledge of the computers. From your conferences with him at				
16	the last meeting you seemed to				
17.	MR. RUBINSTEIN: That's correct, Judge, but				
18	THE COURT: you seemed to need to confer with him				
19	quite a lot during the hearing, and I don't know whether you				
20	need to confer with him here.				
21	MR. RUBINSTEIN: Well, I think that the point that I'm				
22	up to, I think that I can travel this alone, and that is				
23	basically the following: Number one, I spoke to Digital First				
24	and they explained to me the problem with any kind of search is				

impossible with scanned documents. In other words, what they

tell me is that a scanned document must be extracted and then observed. You can't -- because they get a picture of the scanned document, so you can't look inside the scanned document unless you extract it. So even if there was -- the only way was if it was pre-noted, as let's say payroll, when it was filed. But what was contained inside the document you can never know until you open the document. And that is the real problem. The government --

THE COURT: Payroll documents, I would think, would be revealed in bank accounts and things of that sort. So you could -- it's the government's burden, I gather, in this case to demonstrate what the payroll was and what the proper productions should have been and what are improper deductions.

MR. KWOK: That's correct, your Honor. Last time

Mr. Rubenstein asked for payroll records/time sheets, and right

after our conference last time I told him what the Bates

numbers were, where the payroll records/time sheets could be

located, and so those records were indeed turned over.

Now I understand that Mr. Rubinstein may not be satisfied with what those documents, say, or maybe he wants them to be more detailed, but I didn't create those documents. And if those documents are, as he called it earlier, garbage, I mean they are what they are, and I have already turned over those time sheets/payroll documents. And if those documents, once you look at it, aren't really worth the paper they're

Conference

written on, essentially what the defendant is seeking is a whole long expansive process to search for documents that at the end of the day don't really matter.

I mean, your Honor, we have been here for two months. My letter when this whole process started was dated August 8, 2007. Now we're in October, and I'm sorry to say that I think no progress has been made in discovery. Essentially two months have been wasted where we have made no progress, where I have offered to name really right at the outset of Digital First and there has been nothing done.

And like I said over and over, I have turned over everything to them. The reasons keep changing. At first it was the documents were illegible. Once I made the offer to inspect originals, I haven't heard anything back. Then it was the Quicken time sheets, and I told them and directed them to the places where those sheets can be found. And now it's the payroll records. And once again I have directed them to the places where those records can be found.

Essentially their argument boils down to well, you haven't seen what is in the computer so how can you say it is not relevant or material to the defense. Essentially they're asking the government to prove the impossible. I can't prove a negative. I haven't seen it for sure, but then I would just note, I mean this is Rule 16, this is a criminal case, it doesn't have expansive scope of a civil discovery and Rule 16

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Conference

does not call for perfection. The real crux of Rule 16
discovery is how manageable it is in practicality. So I don't
think, given all that and given the two months delay already,
and apparently the defendant is asking for a Monsanto hearing
based on how expansive this process is going to cost. I don't
think this is called for under Rule 16 or otherwise.

With respect to the Monsanto, I think I can resolve
that pretty easily should the Court deny the discovery request

With respect to the Monsanto, I think I can resolve that pretty easily should the Court deny the discovery request with respect to the computers. I have already spoken to Mr. Rubenstein briefly that if the only thing that is at issue is attorney's fees, and without the uncertainty of expense of this whole process, I can work with his office to work out some sort of agreement whereby we can have the defendants sell or refinance his condominium with the condition that a certain portion of the money is set aside in an interest bearing account to protect the government in the event of a collection. In that event, Mr. Rubinstein will get paid, would still be able to represent Mr. Karron, and the government would be protected.

So I think for a whole host of reasons denying the discovery on the computer will really just resolve a lot of issues that have plagued us for two months already.

MR. RUBINSTEIN: Your Honor, I think in the first instance that --

Dr. Karron has arrived, your Honor.

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Conference

1	THE COURT: Yes, thank you.
2	MR. RUBINSTEIN: I think that in the first instance we
3	traveled the path that was really unnecessary, and that is as
4	follows: The government has no right to the information that
5	is contained in those computers. If they had seized they
6	weren't seized pursuant to some search warrant for them to
7	review, these were seized for quote a forfeiture reason. So
8	number one
9	THE COURT: You're raising a different issue now.
10	You're raising a completely different issue now.
11	MR. RUBINSTEIN: I understand that, Judge, but it
12	struck me that if the government seized a file cabinet that
13	they had some right to seize and they seized it and inside it
14	had a bunch of files they wouldn't be entitled to any files.
15	That's what we have here. So I think that that is something
16	that the government is trespassing in an area that they have no
17	right to even have standing.
18	THE COURT: Let's deal with what we came here on.
19	MR. RUBINSTEIN: What we came here on, Judge
20	THE COURT: If you want to make a motion along those
21	other lines you make your motion, but make it quickly.
22	MR. RUBINSTEIN: They gave to me, Judge, or they
23	directed me to these time sheets, and Mr. Kwok quoted from our
24	early morning meeting informally between myself and between

dge, but it cabinet that and inside it to any files. is something hat they have no me here on. Judge -on along those uickly. e, or they quoted from our between myself and -- between the two of us this morning when I referred to these time SOUTHERN DISTRICT REPORTERS, P.C.

Conference

sheets, about 400 pages of them, as garbage, because they only show that people work X number of hours.

I am trying to be prepared, Judge, for a trial that I don't know what witnesses are going to say. I know what my client testifies, things that he intends to testify to, and I am willing to have back-up documents that he has scanned. This man is obsessive. He scanned over -- I think the count is over 18 tractor trailer loads of paper. He scanned through computers. So to expect him to have recall on details that he can be asked about either on direct or cross-examination is I don't think possible without the ability to prepare fully for the case.

There was expenses. Everybody concedes that X amount of money was provided in a grant and an amount of money was spent out of that grant, and the question is whether or not these were appropriate expenditures. And in order to show that the government asked me to turn over on behalf of the defendant a crock pot.

THE COURT: A what?

MR. RUBINSTEIN: A crock pot, a cooking utensil, because apparently it was purchased with grant money. So I asked my wife: How much does a crock pot cost? She said about \$40. So there apparently -- and they haven't given us any sort of outline of which expenditures they're talking about. What we have to look for, what they want to talk about making this

Conference

thing crystallized and understandable to us and to the jury later on, eventually they're going to give them a road map, give the jury a road map of what they say happened.

I don't understand why in a case where we have all of this voluminous material that is going to spend, forget about the cost of duplicating it, how about the man hours in reviewing this stuff? I mean it's astronomical. So I think the government should in good faith give us a road map so we can tailor our investigation for what we're talking about here.

THE COURT: As I understand it, the grant gives you a road map, the grant tells you what are proper expenditures and what, and limits your expenditures that the federal funds are to be used for, to those items. And the government's proof is supposedly shows, as I understand it, what those items are; namely payroll, I gather, and I don't know what other expenses, but basically payroll. Whatever it is that the grant says you can spend the money on you can spend the money on.

They're saying that the funds were spent in other ways and that you didn't spend the money on what the grant said you should have. Now that -- I haven't got the grant in front of me and I haven't -- no one has given it to me, but so far everything that I have heard from you is trying to -- is not geared towards either questioning the government's case or setting up an affirmative defense.

Now if you have -- I had proceeded earlier in this to

Conference

allow you some discovery to set up an earlier affirmative defense. The thought was that it could be in the computer. But everything that you have raised in terms of arguments here doesn't appear to be an affirmative defense in any way and I don't see where we're getting as a result.

I'm about to close this discovery. You've had whatever discovery materials you have had, and if the government strays from its case and your discovery materials were insufficient, you can raise that at the proper time and I'll order a new trial, what have you. But it seems to me that at the present circumstance I don't see that the defendant is being prejudiced by closing the discovery on this type of discovery and going through all the computer materials because you haven't shown me a grounds for going through all the computer materials either to disprove the government case or to set up an affirmative defense.

MR. RUBINSTEIN: Judge, if they had seized what was inside these computers, they had seized it and they had it, they would have to show it to me. But they have this wonderful situation here, we really don't have it, it's inside the computers, we're not looking at it, therefore under Rule 16 we're not required to turn it over to the defense and the defense is not able to look at it themselves of our own work product.

THE COURT: If you and your client aren't focused

7actkarc Conference enough to figure out where the documents would be that you 1 2 3 4 5 6 7 documents right now in the form that they're in. 8 THE COURT: Look, Dr. Karron has ran this computer for 9 10 11 12 13 14 15 16

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would like to see to do it, I can't help that, that's your problem. You've got to be focused enough to -- and the government has set up a procedure where you could obtain the documents but you've got to be focused enough to do it.

MR. RUBINSTEIN: Judge, from what I understand, there is no index nor a word name that you could utilize to find the

I don't know how many years and he is familiar with it. knows where in general things are. He may not have an index but he knows where they are and he can isolate what he wants. He knows how to get into it and he wants to give instructions to the independent -- I don't know what they call them, but independent group that you've both agreed on, that's fine, but we've got to get off this, we want to just be general.

MR. RUBINSTEIN: Your Honor, Dr. Karron has echoed what I said to your Honor before he arrived here. that these documents are pictures, they're not documents, so they have to be looked at in order to ascertain what is in them to find what you're looking for. I can't just say that we want to have birthday card sent to Ms. Hayes on such and such a date or received from Ms. Hayes.

THE COURT: He knows how to access the documents. ran the computer, he knew how to access it. Come on.

Conference

1	MR. RUBINSTEIN: Yes, if he had the computer he could
2	do it. If he had the computer he could do it.
3	THE COURT: If he had the computer he can instruct the
4	people on how to operate the computer
5	MR. RUBINSTEIN: So if he
6	THE COURT: for what he wants.
7	MR. RUBINSTEIN: If he is physically able to be there
8	he could direct the person to do that. He can.
9	THE COURT: There's no reason why he can't physically
10	be there, is there, Mr. Kwok?
11	MR. KWOK: With the computer expert actually
12	conducting the search, and if I mean if the only function of
13	his presence is to direct the person what to do, I don't have
14	any objection to that assuming that it can be done in a pretty
15	quick schedule to avoid further delay.
16	THE COURT: Where is the computer expert and where are
17	the computers?
18	MR. KWOK: The computer and the computer expert are
19	both in Washington DC.
20	MR. RUBINSTEIN: We could have the stuff duplicated
21	less expensively than what they're talking about with Digital
22	First through people that Dr. Karron knows, but it's not going
23	to give what the government is concerned about. And I
24	understand, their concern what happens if something gets erased
25	or something in the process. So they want to have that

Conference

safeguard.

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THE COURT: Wait a minute. I don't -- you were talking to Dr. Karron when Mr. Kwok was talking. He says Dr. Karron can be there, the only restriction is that he not operate the computer, that they operate the computer. And he can give them the instructions and ask them to do this, that and the other thing and they can carry it out and make copies of whatever it is he wants, they can get the copies.

(Pause)

THE COURT: You have had a long conference now with your client.

MR. RUBINSTEIN: Yes, and I'm more confused than before we started the conversation. And I think one of the problems is that I'm going to be my own computer expert explaining to your Honor what this is all about because apparently I am not articulating it properly.

THE COURT: You have until November 1st. Dr. Karron can be at the -- between now and November 1st will be at the offices which these computers are stored with the computer expert you have agreed upon. He can direct the computer expert to whatever part of the file he wants the computer expert to make copies from, and those copies will be made by the computer expert and a copy sent to you, Mr. Rubenstein, and a copy sent to the government of each of those documents so that both sides are aware of what documents may be relevant to this case.

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1	Now the understanding is that the computer expert that
2	you've approved will be the operator of the computer and that
3	Dr. Karron will not because the government is concerned that
4	the someone might erase files or something of that sort and the
5 .	evidence could be destroyed. So under those circumstances you
6	have until November 1st to complete that discovery and complete
7	it and it's up to Dr. Karron to be there.
. 8	MR. RUBINSTEIN: Could I approach the government for
9	one moment, your Honor?
10	THE COURT: Yes.
11	(Pause)
12	MR. RUBINSTEIN: Your Honor, that is acceptable with

one caveat, your Honor. Part of the Monsanto request was that the funds that he would need to pay Digital First are funds that he would have to access from the value of his apartment. And so if we have that understanding he could go forward and attempt to raise the funds so that we can get this project started.

I mean I'll wait --

THE COURT: He's absolutely out of funds? Because all you're doing is making the copies. Maybe wait until we get the bill.

Digital First said they wanted a MR. RUBINSTEIN: week's payment in advance, which was about 14, \$15,000. I don't know if this is going to take a full week, but that's

7actkarc Conference what they asked to undertake the project. 1 2 3 conditions of his release set by a magistrate judge? 4 5 MR. KWOK: 6

THE COURT: I don't even know what the defendant's bond situation is, some other judge set that up. Wasn't

I believe that's correct, your Honor, I have it here.

MR. RUBINSTEIN: He has permission to travel to DC.

MR. KWOK: In terms of personal recognizance bond it's \$50,000.

THE COURT: Just a personal --

MR. KWOK: Signed by two financially responsible persons.

THE COURT: No security?

MR. KWOK: No security.

THE COURT: And you're telling me that this man who held this responsible position doesn't have \$15,000?

MR. RUBINSTEIN: That's correct. As I indicated in my Monsanto request, he has no funds. I have an affidavit from him showing what his financial worth is, or lack of worth. I'll file it.

THE COURT: I suppose I should have a financial affidavit then.

MR. RUBINSTEIN: I have an affidavit. If you want me to submit it to the Court, I'll give a copy to the government.

THE COURT: I don't think People of the State of New

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York are involved in this litigation, Mr. Rubenstein.

MR. RUBINSTEIN: Sorry.

affidavit, Mr. Rubenstein, because there's no statement of assets other than he states I own the apartment and what the apartment is worth and what the mortgage is, but there's no statement of assets and loss. So why don't you use the regular financial affidavit. It is true you'll see a large number of debts which --

MR. RUBINSTEIN: Judge, he hasn't basically been able to function since this project has been closed down. He lost his top secret clearance, he hasn't been able to get other projects, and we're talking about what, in 2003.

THE COURT: I'm just looking at Dr. Karron, he's well dressed and he's always been well dressed in this courtroom, and he's a person -- probably shouldn't say this, he looks as if he has money because of his dress. And it may be misleading, but nevertheless I think you should have a regular financial affidavit. Although I don't doubt the truth of this affidavit, it does not cover that aspect of his situation.

But let's assume that the financial affidavit won't show that he has funds to pay, how do you propose with an apartment to -- I suppose it could be remortgaged. I suppose it could be remortgaged since the mortgage was less than half the asserted value of the apartment.

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MR. RUBINSTEIN: That's what he indicates to me that he's able to do.

THE COURT: But he lives in it; doesn't he?

MR. RUBINSTEIN: He lives in it.

THE COURT: So where is he going to live?

MR. RUBINSTEIN: And he works in it. He's going to get a second mortgage.

THE COURT: So is that the way you propose to deal with it?

MR. RUBINSTEIN: He indicates he could do that.

THE COURT: I think he could.

MR. RUBINSTEIN: I'm hoping he's not overly optimistic, that's all, Judge.

THE COURT: I don't know. With that credit card debt you have there you may have a problem. And you list some over a hundred thousand dollars in credit card debt, about \$150,000 in credit card debt. That may affect your ability to get a second mortgage.

But how are we going to arrange this? I mean --

MR. RUBINSTEIN: I am hoping, your Honor, that as you see the defendant's family has advanced him a substantial amount of money in addition and they don't want to give him any other money.

THE COURT: Don't they want to give him the money for this individual stuff?

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	Confedence
1	MR. RUBINSTEIN: It appears he has the ability to get
2	a mortgage on the apartment, so they're protected. There's a
3	chance unfortunately his mother is in extremis right now and
4	she is on a respirator in a hospital. But I think that even
5	though it's a short time frame, I really think we could resolve
6	this by November 1st with the Digital First and with the whole
7	thing. So it will be on your Honor's schedule, I'm really
8	optimistic about that. So I'll have him execute the affidavit
9	today, I'll file it if you want us to file it with
10	THE COURT: If he has his if his family were to
11	give whatever it is Digital Soft requires and he agrees to give
12	them a second mortgage or whatever they want, if they want
13	security, then
14	MR. RUBINSTEIN: The government would have to

subordinate. I spoke to Mr. Kwok about this.

> THE COURT: The government has to do what?

MR. RUBINSTEIN: They have a lis pendens, I believe, on the property.

There's a lis pendens on the condominium. MR. KWOK: But as I indicated to Mr. Rubenstein, we'll be happy to work with his office to arrange some sort of arrangement, assuming a second mortgage can be had, to set aside a certain amount of money in an interest bearing account so the government would be protected in terms of forfeiture later on. But my only concern is I don't want all this financial jiggling to cause any delay.

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So if I understand your Honor's ruling, November 1st is the completion date of the discovery.

THE COURT: I want to see this done right away so that you can get -- Dr. Karron can get down there and get whatever he feels is necessary out of the computer.

MR. KWOK: I don't know how long the subordination of the lis pendens is going to take, but it sounds like Dr. Karen has family members who can advance the funds. My preference would be to pay that up front to Digital First so the process can be started with the November 1st completion date.

THE COURT: They're not listening.

MR. RUBINSTEIN: Sorry.

THE COURT: What ought to happen, Mr. Kwok was saying, Mr. Rubenstein, is if the family -- the government will give you an assurance that they will reduce the amount of their lis pendens, as I understand it, to permit the family to be reimbursed for the 15,000 out of the second mortgage. Is that right?

MR. KWOK: That's correct. I can give that assurance to the defendant so that the process can be started right away with November 1st as a completion date.

THE COURT: So the family will advance the funds against that assurance. And you can start the process with Visual Soft right away. Otherwise, we're apt to lose Visual Soft, they're apt to go on to some other job. So let's get the

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thing done first so they're not holding people available to do this and then we delay so long that they become a problem.

Let's get it done now.

MR. RUBINSTEIN: I am only smiling, Judge, because you misspoke. You're thinking of this afternoon, Visual Soft is this afternoon. This is Digital First.

THE COURT: Did you know that was this afternoon?

MR. RUBINSTEIN: Robert told me, to make me feel good,
that was on this afternoon, and it made me smile.

THE COURT: Maybe you ought to be around this afternoon.

MR. RUBINSTEIN: Not if I want to stay married, your Honor.

We'll file this this morning, your Honor. I'll go down and explain to Dr. Karron. Could we file it with your courtroom deputy, your Honor?

THE COURT: Yes.

MR. RUBINSTEIN: So we'll do that.

THE COURT: That's fine. But let's get the advance from the family against the government's assurance that it will allow the reimbursement from whatever funds become available through its lis pendens.

Perhaps Mr. Kwok should prepare an order so that Visual Soft will know the terms that I dictated.

MR. KWOK: Sorry, an order concerning --

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7actkarc Conference 1 THE COURT: The manner in which the discovery would be 2 conducted. 3 MR. KWOK: I see. With the operator being the computer expert and so forth. And I'll forward it to your 4 5 deputy. If there's nothing further, can the government seek 6 7 the exclusion of time until November 1st? 8 THE COURT: Yes, time will be excluded in view of the discovery being conducted. 9 MR. KWOK: Thank you, your Honor. 10 11 THE COURT: We're done, Mr. Rubenstein? 12 MR. RUBINSTEIN: Yes, your Honor. We'll be finishing in about five minutes with the affidavit. 13 THE COURT: But you don't need me. 14 15 MR. RUBINSTEIN: No. 16 MR. KWOK: Thank you very much, your Honor. 17 THE COURT: All right. 18 000 19 20 21 22

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7b6dkarc CONFERENCE 1 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK 2 New York, N.Y. 3 UNITED STATES OF AMERICA, 07 Cr. 541 (RPP) 4 v. 5 DANIEL B. KARRON, Defendant. 6 7 8 November 6, 2007 2:15 p.m. - 9 10 Before: 11 HON. ROBERT P. PATTERSON, JR., 12 District Judge 13 **APPEARANCES** 14 MICHAEL J. GARCIA 15 United States Attorney for the Southern District of New York 16 BY: CHI T. STEVE KWOK Assistant United States Attorney 17 RONALD RUBINSTEIN 18 Attorney for Defendant 19 20 21 22 23 24 25

CONFERENCE

THE CLERK: United States vs. Daniel Karron.

MR. KWOK: Good afternoon, your Honor. Steve Kwok for the government.

MR. RUBINSTEIN: Good afternoon, your Honor. Ronald Rubinstein for the defendant.

THE COURT: Good afternoon, Mr. Rubinstein.

Good afternoon, Mr. Karron.

THE DEFENDANT: Good afternoon.

THE COURT: Do we meet with success?

MR. RUBINSTEIN: No, your Honor.

MR. KWOK: As I understand it, the defense did not put up the required deposit for Digital First to start work, and so essentially we are back to where we were the last time.

MR. RUBINSTEIN: The problem is, your Honor, and I have --

THE COURT: I thought it was all agreed upon.

MR. RUBINSTEIN: Yes, and with the date of
November 1st. Unfortunately, the financing did not
materialize. The defendant's immediate family who at that time
I believed would come to the plate for him, as they had in the
past, decided not to. In the interim, a good friend of
Dr. Karron is attempting to buy the apartment and tells me that
within 30 days he should have the financing in place so that he
can purchase the apartment.

I have talked to the government about it, because your

CONFERENCE

Honor knows that there is an outstanding <u>Monsanto</u> request, the government has indicated that they would work something out with me as far as a fee arrangement on the case, but as far as the monies to --

THE COURT: Can't the friend -- we are going to lose the other half of the equation here on this examination of the computer files. Can't the friend loan money on the apartment for the payment?

MR. RUBINSTEIN: He doesn't have the money to loan it. He would have to refinance the apartment --

THE COURT: You can't -- I mean, he is not going to have 100 percent financing on the apartment.

MR. RUBINSTEIN: No, he is not going to have 100 percent financing.

What he has indicated to me, through the e-mails that he has sent me, is that he is putting together a group of friends of Dr. Karron so that there is some leverage on purchasing the apartment that they -- in case they lose the apartment later on and they are obligated on the loan, he wants to leverage his obligation between, I think he said a total of three individuals. That being said, your Honor, that's where we stand.

THE COURT: Somewhere there is going to be equity in that apartment. Can't whoever is putting up the equity, the amount of the computer expert fee, loan it in the interim?

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MR. RUBINSTEIN: It is not just a question of the interim, they are not prepared to do that. What they want to do is have a clean situation where they are able to get 2 to \$300,000 out of the apartment, put up \$100,000 with the government in lieu of -- towards their lien, use the rest for the expenses of the trial, attorney fees and experts and what have you, and they want to be in that position.

Unfortunately, Dr. Karron himself is not in a position to refinance the apartment on his own because of his current situation and his employment situation. So we have this problem.

THE COURT: I don't understand it. If he sells the apartment, the cash would be his, not theirs.

MR. RUBINSTEIN: Well, he has a mortgage. The cash would be used, put in an escrow for the government, for the attorney fees, and for expenses. A good portion of the cash would be his. We're trying and do this within -- and they suggested, or Mr. Goldberg suggested that within 30 days he could have this done.

So that's where we stand.

THE COURT: I still feel that somehow it has to be done that way.

What does the government have to say?

MR. KWOK: Well, the government would just ask the Court to close discovery. In the prior order the Court signed,

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you set November 1st as the deadline for discovery. We have been having this conversation back and forth for more than two months now, and nothing -- absolutely nothing has happened.

THE COURT: Suppose I close the discovery and that is the end of it?

(Pause)

MR. RUBINSTEIN: Well, then, Judge, I guess an alternative situation is something I do not want to have to engage in and create an additional litigation and what have you is to bring a civil suit for return of his property that in our view was improperly seized by the government prematurely.

I mean, we're in a Catch-22 here. I mean, possibly if your Honor wants to relieve me and appoint CJA counsel, Dr. Karron has filed a financial affidavit, maybe under the aegis of the CJA system that is in place, monies would be available through the government. We were trying to avoid that. Dr. Karron wanted me to remain as his attorney on this.

But I don't know the answer, Judge, I'm sorry.

(Pause)

THE COURT: Why can't the government pay for the fee and take an additional lien on the apartment?

MR. KWOK: I don't know the mechanics of that, but just as a matter of principle, I don't think that is a -- I just don't believe that's a prudent course for the government.

First of all, I don't think there is anything material

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or relevant in those computers, which is our position at the outset.

But beyond that, given the defendant's financial means, I'm not sure we could ever get that money back. We do have a lien on the apartment in the event of conviction, and I would be happy to work with Mr. Rubinstein to make sure that he stays on the case, if that's the defendant's desire. But in terms of copying the computers, given that it is the government's view that it is just essentially junk data, I don't think that the expense and the delay are necessary, especially in view of the fact that we have been having this back and forth for two months and we have made absolutely no progress, and I think that going in that direction is just going to create further delay for no good reason.

And I might also add, your Honor, that, you know, if you recall the last time, I had even offered to make the arrangement to subordinate our liens to make funds available both for the retrieval process and so that Mr. Rubinstein can get paid and, you know, and in the course of the past few weeks I also haven't heard anything from the defense about, you know, moving that process forward so that they can get money for the retrieval of the data.

So I think we have gone over this before and I don't think any progress will be made regardless of the financial arrangements we --

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THE COURT: Why can't the defendant execute a note to the federal government for the lien on the proceeds of the apartment for the amount of the fee of the computer specialist, and then that would be a first lien on the purchase of the property, and you pay it and let's get this thing moving? I am not going to make a decision; I don't know what is in those computer files.

MR. KWOK: Because I think under settled Second
Circuit case law, if the government seizes property pursuant to
a lawful seizure warrant, the cost is on the defendant. And it
is true that we have a lien on the apartment, but in the event
of, let's say, a not guilty verdict, we can't forfeit that
property and the government will be out of pocket for
potentially \$20,000 of the cost of retaining --

THE COURT: Until such time as the lien is paid.

MR. KWOK: We would only get the lien only if there is a conviction. If there is no conviction there will be no forfeiture.

THE COURT: Or if there is a sale.

MR. KWOK: Or unless --

THE COURT: Mr. Rubinstein wants to get paid, too. So there will be a couple of liens on the apartment. It is going to have to be sold.

MR. KWOK: And I don't know how soon that sale is going to take place.

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THE COURT: Then have him draw on your note.

MR. KWOK: And what would -- I mean, I guess if we

proceed that way, what would the schedule be? Will they have another two weeks to complete discovery under that?

THE COURT: Yes, I would extend it for the two-week period, have the note payable that way. In the meanwhile, Mr. Rubinstein can decide how he wants to handle his getting paid. I am trying to come up with something that --

MR. KWOK: I don't know how that would work. I would have to confer with my office to see whether that's --

THE COURT: Why don't you call them and confer with them now.

MR. KWOK: OK.

THE COURT: I don't know what is in those files and
I'm not going to make a prejudgment that it is worthless, or I
must admit that I don't know that it is -- it may be helpful,
but the defendant's time as it is, and apparently under Second
Circuit law it is a cost to the defense. So let's --

MR. KWOK: And I don't see what the incentive is at that point for the defendant to sell the apartment. The government would not get paid until the apartment --

THE COURT: Does he want to have a lawsuit with his attorney? Does he want to get sued by his attorney for it?

No.

You have interest running so you are supposedly

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protected.

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MR. KWOK:

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come back?

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MR. KWOK:

THE COURT:

Hold on. OK.

Sure.

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(Pause)

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THE COURT:

Is that all right with you,

You want me to make the call now or when I

See if we can get it done.

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Mr. Rubinstein?

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MR. RUBINSTEIN: Yes, your Honor.

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MR. KWOK: Give me one second.

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(Recess)

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Thank you, your Honor. MR. KWOK:

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I just spoke to my unit chief and I was told that the government does not do that in the ordinary course. However, if the Court feels strongly in this case that that's the proper course to take to facilitate the resolution of this issue, we would not object to the Court's entering an order directing the government to pay for the cost of the discovery with a note from the defendant. And I would also add, if the Court agrees to order the defendant to take all necessary steps, starting right now, to sell his apartment, because I alerted to the Court earlier that under this scenario I don't see what incentive he has aside from avoiding litigation from his own attorney to sell his condo.

> I was going to ask Mr. Rubinstein, what THE COURT:

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steps has the defendant taken to sell the apartment on the open market?

MR. RUBINSTEIN: He has a real estate agent and he has this buyer through -- the individual, Lee Goldberg, that I had indicated to you --

THE COURT: But is it listed? Is the apartment listed for sale?

THE DEFENDANT: We've got --

THE COURT: It should show up on the multiple listings.

(The defendant conferred with counsel)

MR. RUBINSTEIN: No, it is not listed, your Honor. It has not been listed yet.

THE COURT: Well, it has got to be listed.

MR. RUBINSTEIN: Because from what I understood is that this friend of the defendant's, this Lee Goldberg, who has been in touch with me both by telephone and by e-mails, has indicated to me that he is in the process of putting together to buy the place with a group.

THE COURT: You want to get market value, so you might as well list it and you will get bids.

MR. RUBINSTEIN: They are getting it appraised now, Judge.

THE COURT: Appraisals are not the same as real live bids, and you know this market, subprime and everything going

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on, you don't know what kind of a price you are going to get unless you -
MR. RUBINSTEIN: We will list it this week, Judge.

will list the apartment.

THE COURT: Well, on the condition that you'll list it, then I'll sign an order to be submitted by the government so that they will pay the cost and take a note from Dr. Karron in return therefor, and we'll get this thing done in the next two weeks.

(Pause)

MR. KWOK: OK. So if I am counting my days correctly, the --

THE COURT: If you give me the order, I will sign it right today.

MR. KWOK: And then for the completion of discovery, the new deadline is, I guess, November 20th, two weeks from now?

MR. RUBINSTEIN: Judge, could we have until after -Thanksgiving is that Thursday, November --

THE COURT: It is just discovery.

MR. RUBINSTEIN: But we need the money to give to the --

THE COURT: Well, you'll have the money. If the government says it is going to pay, I don't think that the --

MR. KWOK: We will make the representation this

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afternoon to the forensic expert to say that the government will pay, and I believe that they will then start work right away. I think they will, too. The government's THE COURT:

credit is good.

MR. RUBINSTEIN: Then it should work.

MR. KWOK: So I will submit two proposed orders to the Court, one on the sale of the apartment and the second is the revised order about the discovery process and what Dr. Karron --

THE COURT: And then you want a note for Dr. Karron to sign.

> MR. KWOK: Exactly.

(Pause)

THE COURT: I will be in chambers to sign those orders and I quess the thing to do is get it off as soon as possible.

MR. KWOK: I will, your Honor.

THE COURT: Dr. Karron can be down here tomorrow morning and start his work.

THE DEFENDANT: I can't come tomorrow morning.

THE COURT: Well, the day after, then, whatever day you do it. It is important to you, Dr. Karron. You had better do it, or you waive it. If you don't do it, you waive it.

THE CLERK: Did you set a date for the completion of the discovery?

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MR. KWOK: I think it is November the 20th. 1 THE COURT: November 20th. 2 3 THE CLERK: Do you want to have a conference and have 4 them back because time will only be excluded until the 20th, I 5 think? THE COURT: Time will be excluded until the 20th. 6 7 MR. KWOK: Thank you, your Honor. 8 So I will submit the proposed orders to the Court 9 later this afternoon or tomorrow morning, and then I will 10 direct the forensic expert to start work and make arrangements 11 with Dr. Karron. 12 THE COURT: All right. All right, Mr. Rubinstein? 13 14 MR. RUBINSTEIN: Yes, your Honor. Thank you. 15 THE COURT: All right. 16 MR. KWOK: Thank you, your Honor. 17 MR. RUBINSTEIN: Thank you very much, Judge. 18 19 20 2.1 22 23

7BQSKARRON 1 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK 2 3 UNITED STATES OF AMERICA, 4 07 Cr. 541 5 v. 6 DANIEL B. KARRON, 7 -Defendant. 8 9 November 26, 2007 3:45 p.m. 10 Before: 11 12 HON. ROBERT P. PATTERSON, 13 District Judge 14 APPEARANCES MICHAEL J. GARCIA 15 United States Attorney for the 16 Southern District of New York CHI T. STEVE KWOK, 17 Assistant United States Attorney 18 RON RUBINSTEIN, ESQ. Attorney for Defendant 19 ART EHUAN (Via phone) 20 21 22. 23 24

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(case called)

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MR. KWOK: Ready, your Honor. Steve Kowk for the government.

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Good afternoon.

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MR. RUBINSTEIN: Good afternoon, your Honor, Ron Rubinstein for the defendant.

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THE COURT: Good afternoon.

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Where do we stand at this point?

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MR. KWOK: We are at the same place, your Honor. time, as you recall, the court extended the deadline for the close of discovery to November 20th and asked the government to pay the advance fees and other fees to start the duplication process. On that same day I instructed Digital First that we are for now at least bearing the cost and discovery can begin. I spoke to the expert this morning and he told me that they still have not started the duplication process and that is because instead of what I believed the parties agreed, which is Dr. Karron or his representative would be at the site to identify and retrieve those files, the specific files that he claims he needs for his defense, they are now proposing to copy all the files, which is not within the contemplation of the government at the time. So he told me that at the earliest that they can get that started would be early next Wednesday to begin, not to say when to end, and so we are at the same place where we were and I again urge the court that the time has come

7BQSKARRON

for the close of discovery. The defendant has been afforded plenty of opportunities to do what he wished to do. The last time I even did the extraordinary. I was told by our deputy chiefs that the government usually does not bear the cost of discovery, that the defendant is required to pay. But we nonetheless made that offer and even without the signing of a stipulation, because I circulated a copy but haven't gotten the signed copy back, we still made that offer good and extended it for two weeks as the court instructed. And since the defendant has simply not availed himself of these many opportunities, I again urge the court to close discovery and set a trial date in this matter.

THE COURT: Mr. Rubinstein.

MR. RUBINSTEIN: Your Honor, I spoke also to the gentleman from Digital First and your Honor may recall this is a company that the government found and found acceptable. This gentleman was in Saudi Arabia. It's a very small company. He was in Saudi Arabia and while he was gone --

THE COURT: I don't care where he was.

MR. RUBINSTEIN: He wasn't around to get started is the problem. It's a very complicated situation, Judge. It's apparently a very, very complicated situation in that the equipment is not the kind of equipment that people that are even conversant about computers understand. That is why they have this specialist. This is a machine that basically was

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1	built in part, built by Dr. Karron. The machine that
2	apparently is functional
3	THE COURT: When was he available?
4	MR. RUBINSTEIN: He says he will be available, he told
5	me, starting Tuesday, a week from tomorrow.
6 .	MR. KWOK: That is certainly not my understanding
7	about why
8	THE COURT: Get him on the phone now.
.9	When did I sign this order? The 19th.
10	Didn't we sign this order on the 6th?
11	MR. KWOK: I believe the court signed two orders.
12	THE COURT: I signed an order November 6 and defendant
13	was ordered to take all necessary steps forthwith.
14	MR. RUBINSTEIN: That related to the apartment, which
15	we did.
16	THE COURT: That is to the apartment but it was
17	understood at that conference that it would be right away.
18	MR. RUBINSTEIN: But we have no control over Digital
19	First.
20	THE COURT: I understand. Why wasn't I told about
21	this on November 19?
22	MR. KWOK: Your Honor, if I may, I believe that Mr.
23	Ehuan was out of the country for a while but it was not the
24	cause of delay. It's not a one-man show. There were people
25	from the Department of Commerce. There were also

7BQSKARRON

representatives there designated by Mr. Ehuan to make
themselves available should the defendant choose to go forward
My understanding for the reason of the delay is because at
first Dr. Karron wanted a woman named Janet or something to be
present.

THE COURT: Mr. Ivan, is that his name?

THE CLERK: Ehuan is the way it's pronounced.

THE COURT: I am going to put him on the speaker phone.

Mr. Ehuan, I am told by defense counsel that you were in Saudi Arabia and not available to conduct the discovery that I ordered on November 6.

MR. EHUAN: Yes, sir, your Honor, I was out of the country the week of the 12th and that week we did have available two individuals that were available to do the work. The issue was we didn't have the hardware that was supposed to be provided for us to make the copies.

THE COURT: Who was supposed to provide the hardware?

MR. EHUAN: Dr. Karron's designee. At that time it
was Janet or Matt Rothman, sir.

THE COURT: I see. So that was the only reason it didn't go ahead?

MR. EHUAN: That is correct, sir. We didn't have the hardware.

THE COURT: Which was to be provided by the defendant?

1	MR. EHUAN: Yes, your Honor, that is correct.
2	THE COURT: I see. And I am trying to remember the
3	name of your company.
4	MR. EHUAN: Digital First, sir.
5	THE COURT: Digital First was always available during
6	that period?
7	MR. EHUAN: That is correct, sir. We had gone out the
8	previous Friday, the 16th, to look at the systems and of the
9	two systems one we could not get to turn on, to boot up. There
10	was some kind of hardware problems. The other machine we were
11	able to get up and running and at that point we were in a
12	position to that Monday start the imaging process of getting
13	the data.
14	THE COURT: What date was that?
15	MR. EHUAN: That would have been the 19th, sir.
16	THE COURT: So that is only a week ago?
17	MR. EHUAN: I am sorry, I am looking at my calendar.
18	That would have been the 12th. So we were there on the 9th,
19	which was Friday, at the Department of Commerce.
20	THE COURT: All right. You were there with the
21	materials on the 9th?
22	MR. EHUAN: We were there the first day we were
23	using essentially to see if we could get the machines up and
24	running. These machines are old, extremely complicated
25	machines, so we wanted to spend a minimum of a day to see if we

could get the machines up and running and of the two machines we were only able to get one up and running. The other one, the one identified as Kasdi One, had hardware problems that we could probably fix but not at that point in time. We didn't have the equipment. But we were available as of that Friday had we had the equipment to start imaging. We anticipate that it will probably take us a week because of the large amount of data there to get off of that machine. So we gave ourselves the week of the 12th to do the imaging.

THE COURT: And what happened on the succeeding days?

MR. EHUAN: On the 9th after we had spun up the

machine which by sending e-mail out to the attorney or the

e-mail went out to Matt Rothman who we were advised by Dr.

Karron was his technical representative. So we advised we had

gone there. We had got the machine and they essentially said

hold off, we don't want to do anything at this point because we

want to make sure that the -- the concern was that potentially

if we did something we might break the remaining machine so

they wanted us to hold off, and the other issue was they didn't

have the hardware that we needed to copy the data out to. So

THE COURT: What happened next?

it was kind of two issues.

MR. EHUAN: So we have been talking with with them and we have explained exactly what we need hardware-wise. I spoke with Mr. Rothman this morning and I said, what is the status,

and he said, I got the hard drives, he says, but I don't have the case to go put the hard drives in and also the hard drives had not been formatted to the specifics that we need. It's a special type of formatting. It's not going to be your traditional Windows-type of formatting so that is kind of our issue right now.

THE COURT: Just so you understand, these records were supposed to have been completely copied to the degree that the defendant needed them over a week ago under the order and they were to have last week to review those documents and determine whether they were going to make any motions. Now, this isn't funny. This is a very serious matter.

MR. EHUAN: It isn't funny at all, sir.

THE COURT: Yes, I know that and I am trying to explain and we have court procedures that have to be complied with and I have to know why they weren't complied with and from what I gather the defendant doesn't have the machinery necessary to make the copies, is that correct?

MR. EHUAN: Previously that had been the case, your Honor. We have been ready to do this from the word go. We have been ready for weeks. At this point in time it has been a hardware issue where without the hardware we cannot make the copies. Your Honor, the other thing I do want to make known is that unfortunately this is an extremely complicated system so it's going to take about a week once we have the hardware in

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place just to make the copies just because of the tremendous amount of data.

THE COURT: All right.

Is there any questions that either the prosecution or defense wants me to ask?

MR. KWOK: Yes, your Honor. I think in all fairness to Mr. Ehuan and his company, I think the original plan that Mr. Rubinstein and Dr. Karron proposed was that Dr. Karron would be at the site to identify specific files to be copied which would take much less than the time that we are looking at now. All these problems arose because in the middle of the game they wanted much more.

MR. RUBINSTEIN: That is not accurate, Judge.

THE COURT: That is my recollection of the record, Mr. Rubinstein. But I want to know if there are any more questions of Mr. Ehuan. That is my question. No one has answered that question.

MR. KWOK: If the court could direct a question to Mr. Ehuan as to the cause of the delay aside from the ones that he mentioned already, why that hardware specifically was not available at the time.

THE COURT: Is there any reason why the hardware was not available, Mr. Ehuan?

MR. EHUAN: I have been told that it is the case that it's expensive and they are trying to acquire it and that is

what I have been advised. It's just a cost issue requiring the hardware.

MR. RUBINSTEIN: What I don't don't understand, Judge, is they were hired to duplicate it. Don't they have the hardware to duplicate it? I don't follow that. Why did it become our burden?

THE COURT: All right.

The question, Mr. Ehuan, is why is this special hardware that has to be acquired, why doesn't your company have the duplication hardware?

MR. EHUAN: We do have the duplication, we just don't have the actual storage media which we could have gone out, and our original intent was to get it ourselves but we were told by Janet several weeks ago that they would provide the hardware. So we said, okay, if you are going to provide the hardware we will wait for you to get us the hardware.

THE COURT: It seems to me that the problem is yours, Mr. Rubinstein. You created your own problem.

MR. RUBINSTEIN: Judge, I was unaware that this is what was told to Mr. Ehuan.

THE COURT: Apparently Dr. Karron doesn't want this material at all. That is my conclusion, that he doesn't want it at all. You are making this up for delay purposes. Not you, your client. Otherwise we would have had them make the copies as they were prepared to do. Instead, oh, no, we have

to have our machines here. We want the copies on these machines. Well, look, that is pretty transparent.

MR. RUBINSTEIN: Just as one of the two machines was one of Dr. Karron's concerns at the beginning was they were not capable of booting up, we are not suggesting that anybody in Mr. Ehuan's company did anything wrong but Dr. Karron was very concerned about the integrity of these machines and the fact that they were old and so complicated that it was easy to create a malfunction here. I have been in touch with Dr. Karron on a regular basis. I spoke to Mr. Ehuan on a number of times after your Honor had signed the order. Until Mr. Kowk contacted me last week I didn't even know there was a problem here. I wasn't even aware there was a problem we had.

THE COURT: You knew you didn't have copies. You were supposed to have copies last week of whatever you wanted and it was supposed to be, as Mr. Kowk says, a limited number of documents. Now suddenly it's all the documents.

MR. RUBINSTEIN: If we --

THE COURT: At government expense for you to use and not use.

MR. RUBINSTEIN: You may recall, Judge, that we needed all the documents because there were imagings that you had to copy in order to get all of the documents because there is no current index and we have to create an index so that we can reference what is actually kept in the computers.

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THE COURT: I am sorry, but I have come to the end of my patience. I have come to the end of my patience with Dr.

Karron and if he doesn't want to conduct this, get the discovery by whatever means it is, I am calling an end to it.

He can go down there this week and he can pick it up this week.

If he doesn't do it this week, it's done. It's over. So he better get down there right now.

MR. RUBINSTEIN: We will get the disks to them tomorrow. But the question is can Mr. Ehuan once he has the disks, can he start the process?

THE COURT: Did you hear that, Mr. Ehuan?

MR. EHUAN: Yes, sir. I think by tomorrow we should be able to have someone available if not tomorrow by Wednesday. The only issue is going to be the hardware. If the hardware isn't ready it does us no good. We still need the hardware to put the data onto.

THE COURT: That is if he wants to supply his hardware. The hell with his hardware. As far as I am concerned the hell with his hardware. I don't care if he doesn't have the hardware there, use your hardware.

MR. EHUAN: Okay, your Honor. We will have to do the same process though because, again, the only problem here is it's a tremendous amount of data so we would have to essentially do the same thing, acquire these very large hard drives and format them, which is going to take us a few days.

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1	THE COURT: To what, assemble or to prepare the
2	documents?
3	MR. EHUAN: Some to prepare the hardware to be able to
4	copy the hardware to, your Honor.
5	THE COURT: So when would you be ready?
6	I can't go along with this the ball is in their court;
7	no, it's in your court, my court, your court.
8	MR. EHUAN: Your Honor, if you put it in our court we
9	can have these assembled and ready I would anticipate by either

t we either Thursday or Friday.

And when would the documents be ready? THE COURT: We can start the imaging provided we get MR. EHUAN: access from the Department of Commerce. If we got it ready by Friday we can start the process on Friday and it would take several days to copy the data off, your Honor.

> When will it be ready? THE COURT:

MR. EHUAN: With no problems we could be done by next Friday, the 7th, your Honor. We would have all of the data off onto media that could then be examined.

> Is there any objection to that? THE COURT:

MR. KWOK: Well, the government would certainly I think at this point our position is that the time has come for the close of discovery. At the very least --

THE COURT: It certainly has come to a close of I agree with that. discovery.

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MR. KWOK: At the very least if the court is inclined to give Dr. Karron one last chance we should not be talking about the wholesale duplication and imaging of all the documents. We should be talking about what we at first contemplated, which is Dr. Karron or his representative would be down there to identify specific files to be copied so we don't run into these sorts of problems about their machines, our machines, and truckloads of data that we don't know how they sort through.

MR. RUBINSTEIN: Why should we call it discovery?

This is really not discovery. This is the defense trying to prepare its defense. If your Honor wants to technically close discovery and figure out a trial schedule based upon --

THE COURT: We made a deal, Mr. Rubinstein. Dr.

Karron was going to look at the index. He was going to select out whatever documents needed copying. There were supposed to be a discrete number. He says he has everything in the world in there and we are not going to have a situation where we are going to get a lot of irrelevant documents copied at government expense. If you want those documents either you pay for them, all of it, or if you want a selected number then do it according to Hoyle and they will pay for it.

MR. RUBINSTEIN: There is no index, Judge.

THE COURT: I know there is no index. I am fully aware of the facts.

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MR. RUBINSTEIN: Ask Dr. Ehuan if without an index they can determine where a particular item is to copy. I understand you can't. If I am mistaken --

THE COURT: The disks belong to the government and you can look at the disks and select the documents from that.

MR. KWOK: Exactly. I can direct the question to Mr. Ehuan. With Dr. Karron present or his designated representative could they, by looking at the the files on the computers, identify the files they need and have those files copied?

THE COURT: I don't understand the question.

MR. KWOK: Mr. Rubinstein just said that there is no index and therefore there is no way to identify specific files but that is not true. If Dr. Karron would get himself down there to identify those files for Digital First to copy -- of course, they couldn't do it without his help but that is sort of what the parties have agreed, that he would be down there or instruct somebody down there to look at the computer as if he were sitting in front of the computer in the usual course and point to the files that he needed which he hasn't done.

THE COURT: That is what was contemplated.

MR. RUBINSTEIN: I am asking whether or not that is feasible or possible from Mr. Ehuan what the government is suggesting that where you have no index that how can Dr. Karron distinguish one file from another or how could they find --

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1	THE COURT: Because he made the files, right?
2	MR. KWOK: It seems to me we are going over old
3	ground. That is what he agreed to. If that is impossible he
4	should have said so at the outset. We did agree to pay for
5	duplication with that understanding and if he is saying it's
6	not possible that is it. If it's impossible they shouldn't
7	have agreed to it in the first place. Three months from now we
8	will be hearing the same argument about how big the machines
9	are, how much data, how delicate it is, and how time consuming
10	it is, and we will be in exactly the same place as now.
11	MR. RUBINSTEIN: Mr. Ehuan says within a week he will
12	have the material.

THE COURT: I am not going to have the government pay for your getting the copy of the material. If he needs a copy for his defense he goes down there and he selects what he wants and they make a copy of it and give it to him.

MR. RUBINSTEIN: We are reimbursing the government. It's not at the government expense truly. We are reimbursing the government on the sale of the house. It's not at the government's largess.

MR. KWOK: I am not optimistic about seeing the money because assuming the house sells at a lesser value --

THE COURT: You are changing the rules of the game after you made an agreement and I entered two orders, Mr.

Rubinstein, and you are trying to change it and I am not going

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to put up with that. So you either do it in accordance with what was agreed on on the record or you forget about it.

Let me ask you, Mr. Ehuan, if you get the machinery and you prepare, what do you prepare, disks with the machinery?

MR. EHUAN: Your Honor, if we were going to make the entire copy of the entire machine --

THE COURT: Not a copy but so that it can be read, a copy that can be read.

MR. EHUAN: We would wind up initially putting it on the hard drive and then we would put it on DVDs or CDs or it could be read.

THE COURT: I see.

MR. EHUAN: That is if we were just going to do a copy as opposed to an image. So if Dr. Karron was there and said these are the things we need to copy off, then it obviously makes it easier because we are making what is called a logical copy as opposed to an image which is going to take some more work on the back end.

THE COURT: Here is what I am trying to ask you I guess. I presume that there is material that is relevant to this case if you put it on the hard drive can it then be displayed so that Dr. Karron could say I want that or I don't want that and then when he says I want that you copy it until he says stop and then you go on and visually review what is on the hard drive and he says here, I need this, and you copy that

and can you go through the whole shebang, if I can call it that, that way? Is that feasible?

MR. EHUAN: It is not, your Honor, to be able to display what we would be able to show or display, not a visual, but we would be able to display the directory structure as file links so that if he said that directory or that file that I see there is pertinent, we can then copy it out, but we wouldn't be able to bring it up so that he could see it.

THE COURT: I see. So as he goes through he can say what file names he believes to be relevant and what ones he believes are not relevant.

MR. EHUAN: Yes, your Honor.

THE COURT: Okay.

MR. RUBINSTEIN: Dr. Karron has already purchased 20 terabyte disks for copying purposes so from what I understand that is what Mr. Ehuan, among other equipment, that is what he needs, is that correct?

THE COURT: What he is saying -- wait a minute, let's stay with where we are. It's on the hard drive. If you are going to talk to Mr. Karron, Mr. Rubinstein isn't going it to hear. As I understand it it's on the hard drive and can be brought to view as to what files are on the hard drive and then Dr. Karron would select those files that he wants on the disks and that, then, you could copy those files for him onto the disks, is that correct?

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1 MR. EHUAN: That is correct, your Honor.

THE COURT: And the only copying would be those files that he says he wants, is that right?

MR. EHUAN: That is correct, your Honor.

THE COURT: Then how would you make a copy for the government to have so that they would know what relevant documents to keep?

MR. EHUAN: What I would want to do then is we would have, once we made the copies for Dr. Karron onto his device what we would do is take that information and copy it to another hard drive that the government would retain. So that you would each have a copy of everything.

THE COURT: I see. That is sort of what I had envisaged the way this thing would go, Mr. Rubinstein. Why isn't that satisfactory?

MR. RUBINSTEIN: Apparently the problem is that these items were filed day-by-day without any headings or what have you and Dr. Karron would need to see the image to know what he he needs copied because it's like a file cabinet with tens of thousands of pieces of papers just in a file cabinet with no headings, no index, and no table of contents and because he scans all these documents in you can't know what is in the document unless you image it. Is this copying process going to enable from the hard drive that is created, can a person get the image? That is I guess the question. Do you understand

Mr. Ehuan?

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1	that, Mr. Ehuan?
2	THE COURT: Can you hear him, Mr. Ehuan?
3	MR. EHUAN: No, your Honor.
4	THE COURT: He maintains that the files are, let's
5	say, on a daily basis and that they were more in the nature of
6	a chronology rather than in the nature of a filing system and
7	that, accordingly, the only way he can find the documents that
8	he would want would be on reviewing every day of work that he
9	performed and he doesn't know what file they went into or what
10	have you for some reason, and I don't know what reason, but
11	nevertheless that seems to be what he is claiming. There is no
12	way we can
13	MR. EHUAN: We can look at documents by
14	THE COURT: You can look for documents in every file?
15	MR. EHUAN: By dates, your Honor.
16	THE COURT: He will just give you every date.
17	MR. EHUAN: Or the date it was created on the device.
18	We can potentially look at it that way if dates are important.
19	So if he says the month of August 2006 any document I created
20	from that we can filter that way and pull data off that way.
21	MR. RUBINSTEIN: What kind of costs are we talking
22	about?
23	THE COURT: What kind of costs are we talking about,

MR. EHUAN: Your Honor, it's going to depend on how

long it's going to take for him to say this is the data. If it's an hour it's going to be \$350. If it's ten hours multiply that by ten.

THE COURT: What is the cost going to be once you get your machinery and you are asked to copy let's say I think what Mr. Rubinstein is asking is what is the cost of the entire file going to be?

MR. EHUAN: We had anticipated that if it took us a week we were anticipating between 10 to 14, 15,000 if we were on site the entire week doing the copying.

THE COURT: And before that you would have what for set-up costs?

MR. EHUAN: We haven't even taken that into consideration because after they told us that they wanted to use their hardware we kind of dropped that and said as long as you provide us the hardware we would take care of the imaging. I anticipate that would probably take -- we would have to buy the equipment, set it up, so I anticipate that about a day's worth of work to get everything ready.

THE COURT: Cost?

MR. EHUAN: 1000, 2000, your Honor.

THE COURT: Is that good enough?

MR. RUBINSTEIN: There still would be a budget, your Honor. We have budgeted an amount.

THE COURT: Maybe the cheapest way to do it is just

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| run it off.

MR. KWOK: By that you mean copy the whole thing?

They have been given an opportunity to do that as well. I knew when I called Mr. Ehuan and spoke to him that they were changing the rules in the middle of the game and proposing to copy it all. I didn't object at that point. That wasn't the reason why we are here and not making any progress, because they kept insisting that they wanted certain people to be there, certain equipment to be supplied by them and then they didn't deliver, so it's not a matter of the government not being accommodating even when they wanted to get more than they requested of the court and the government the last time. They had the opportunity to copy the whole thing and even though Mr. Ehuan was out of the country there were people around to help him to do that and they still didn't do it.

THE COURT: Let's proceed and have it all copied and the cost will be paid for how, just so I know. By the government so you get started but then reimbursed by the defense from the proceeds of the apartment?

MR. KWOK: I know the last time the government agreed to do that but I was told that that was really quite an extraordinary measure that the government has agreed to. I don't want to re-commit the government without checking with my office, especially because we did offer this and they didn't take us up on it and now the clock is running. We incurred

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expenses even though nothing was done just by the setting up process and and I am not protected right now by a signed stipulation. I circulated it to Mr. Rubinstein and I still haven't gotten it signed.

THE COURT: Do we need Mr. Ehuan any further?

MR. RUBINSTEIN: No, your Honor. I don't believe so.

THE COURT: Anyone?

MR. KWOK: I don't believe so.

THE COURT: Thank you very much, Mr. Ehuan.

MR. EHUAN: Thank you, your Honor.

THE COURT: What does the stipulation say, Mr. Kowk?

MR. KWOK: It just sets forth what the parties agreed to on the record last time, namely, that the defendant will take all necessary steps to sell his apartment, that the proceeds will be forwarded to the custody and control of the United States marshals and held there pending further order of the court, and that the government will be reimbursed out of the net proceeds from the sale of that condominium. It's objectionable from my point of view and I got no objections from defense but I haven't gotten it signed.

THE COURT: Any reason, Mr. Rubinstein?

MR. RUBINSTEIN: There was one thing that Mr. Kowk and I agreed to put on the record and I was hoping that he would memorialize it in the stipulation and that is that it's understood that attorneys' fees would be considered by order of

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the court to be paid out of these monies. There is nothing in 1 the stipulation for that but he said that he has no problem --2 What was to be paid out of these monies? 3 THE COURT: Attorneys' fees. MR. RUBINSTEIN: 4 That is something that when you pay or 5 THE COURT: 6 when you sell the apartment this would be up to a certain 7 amount. The cost of duplication is set at \$30,000. 8 MR. KWOK: We have the cost of duplication but let's .9 THE COURT: get that taken care of. You haven't sold the apartment. 10 MR. RUBINSTEIN: We are executing the stipulation now. 11 Is it being listed? THE COURT: 12 It has already been listed by 13 MR. RUBINSTEIN: 14 Halstead Brokerage. THE COURT: You got it listed on what do they call it 15 16 nowadays, the multiple listings? 17 MR. RUBINSTEIN: Yes. They have an exclusive but they have for multiple listings the co-broker. In other words, they 18 19 are the lead broker so if another broker sells the apartment 20 they go 50-50 on the commission. So it is multiple listed. 21 That is what I was informed by Mr. William Nicolai, who is the vice president of Halstead. 22 23 THE COURT: The only thing I am concerned about, and I signed the stipulation that you all have signed and I will hand 24

back the copy to the parties, and I am concerned now when we

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get on to trial, and we have a jury I presume, and the problem
will be objections to documents in terms of their relevancy and
that is something that I don't want coming up at trial because
the jury while you are all arguing about the relevancy and why
it's relevant to that, that or the other thing, the jury is
sitting on their heels in there getting annoyed and more
annoyed and I don't want to see that happening. So you are
going to have to devise a way so that prior to trial some of
the issues or relevancy of documents are dealt with. I think
the documents have to be relevant to the costs or the
operations under the grant in one way or another and I can't on
the defense case have the government suddenly looking at
documents that on their face don't appear to be relevant in any
way. So if we got into arguments of that sort it seems to me
the parties ought to work out some way of managing
pre-screening or what have you.

MR. RUBINSTEIN: I don't have a problem pre-screening and showing the government the documents that I intend to offer on the defendant's case in chief.

THE COURT: Something like that it seems to me has to be worked out because otherwise the jury is going to go crazy. So you have no problem with that?

MR. RUBINSTEIN: No, your Honor.

THE COURT: Okay. Anything else to take up?

MR. RUBINSTEIN: I don't know about the documents.

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Let me say this: If there are documents I intend to use for cross examination that is a different thing. What I am talking about is in the defense in chief the documents we would offer into evidence I will make a complete list of that.

THE COURT: That is what I was talking about. Cross examination is something else.

MR. KWOK: Just so I am clear on the resolution of the issues we have been discussing, is there a deadline the court now sets as the new deadline by which the duplication has to be completed?

THE COURT: The duplication has to be completed a week from Friday.

MR. KWOK: So the 7th of December?

THE COURT: The 7th of December. And I suppose we better have a date for any motions you are going to make, Mr. Rubinstein?

MR. RUBINSTEIN: I don't see any motions at this time, your Honor.

THE COURT: All right. By the 7th of December I will want to know whether that is a final motion application.

MR. RUBINSTEIN: I don't don't know if I want such an infamous date.

THE COURT: That is my date, Pearl Harbor.

MR. RUBINSTEIN: You probably enlisted the next day.

THE COURT: That is my date.

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1	By the 10th, I guess. I don't want to make it the
2	11th.
3	MR. KWOK: Do we have a conference date on the 10th?
4	THE COURT: Yes.
5	MR. KWOK: What time?
6	THE CLERK: 4 o'clock.
7	MR. KWOK: The government moves to exclude time until
8	then in the interest of justice so that discovery can be
9	completed.
10	THE COURT: All right. Time is excluded until then so
11	discovery can be completed and Mr. Rubinstein can give us a
12	final on his motions.
13	MR. KWOK: Thank you, your Honor.
14	THE COURT: Okay.
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COUNSELORS AT LAW

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TELEPHONE (212) 545-8777 FAX (212) 679-1844

November 29, 2007

Re: NIST Cooperative Agreement No.: 70NAB1H3050

Dear Dr. Karron:

On November 28, 2007, I spoke with Assistant United States Attorney Steve Kwok in regards to the above entitled matter. According to NIST, there appears to be a balance of \$54,500 available. The government believes we misread the letter and the funds are actually not available.

I advised AUSA Kwok that the funds were legitimately earned and if available I would encourage you to obtain the funds and Mr. Clark advised me that the government's consent was not necessary

I further suggest you place the funds in my escrow account to be used for expenses in the criminal case.

Very truly yours,

Ron Rubinstein
RUBINSTEIN & COROZZO, LLP
Rubinstein
Rubinstein

Attorney for Defendant 260 Madison Avenue

New York, New York 10016

(212) 545 - 8777



UNITED STATES DEPARTMENT OF COMMERCE National Institute of Standards and Technology Gaithersburg, Maryland 20899-

November 05, 2007

Mr. Peter Ross Computer Aided Surgery, Inc. 300 East 33rd Street, Suite 4N New York, New York 10016

RE: NIST Cooperative Agreement No.: 70NANB1H3050

Dear Mr. Ross:

The above referenced cooperative agreement ended on September 30, 2004 with a balance in the grant account totaling \$54,500. We want to be sure our records agree with yours before we proceed to deobligate these funds.

If there were additional claims made against the account, please so indicate and we will proceed to deobligate the remaining balance and finalize the closeout of this project.

You may submit the requested information to me via E-mail at the address noted below.

If we do not hear from you by November 30, 2007, we will assume that the information we have is correct and will proceed to deobligate the remaining funds in the grant account.

Sincerely yours,

em milne James M. Browning

Grants Specialist

GAMD/DA/CFO/NIST

100 Bureau Drive, MS 1650

Gaithersburg. MD 20899-1650

Phone: 301-975-8088 FAX: 301-840-5976

E-mail: james.browning@nist.gov

C: Heather Mayton Grant File



	HERN DISTRICT OF NEW YORK	
UNIT	ED STATES OF AMERICA,	New York, N.Y
	v.	S2 07 CR 541
DANI	EL B. KARRON,	
	Defendant.	
	x	
		June 2, 2008 9:30 a.m.
Befo:	re:	
	HON. ROBERT P. PA	TTERSON, JR.,
		District Judg
	APPEARAN	ICES
MICH	AEL J. GARCIA	
	United States Attorney for the Southern District of New York	
BY:	STEVEN KWOK CHRISTIAN EVERDELL	
	Assistant United States Attor	neys
RUBI	NSTEIN & COROZZO, LLP	
	Attorneys for Defendant	
BY:	RONALD RUBINSTEIN	
Also	Present: Rachel Ondrik, U.S. Kirk Yamatani, U.S.	
	Tamacani, 0.0.	
	SOUTHERN DISTRICT R	EPORTERS, P.C.

(212) 805-0300

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- 1 THE DEPUTY CLERK: All rise.
- THE COURT: Please be seated.
- 3 (Case called)
- 4 THE DEPUTY CLERK: Is the government ready in this
- 5 matter?
- 6 MR. KWOK: Yes, we are, your Honor. Steve Kwok for
- 7 the government. With me at counsel table is Christian
- 8 Everdell --
- 9 MR. EVERDELL: Good morning, your Honor.
- 10 MR. KWOK: -- our paralegal and the special agents.
- THE COURT: Good morning.
- 12 THE DEPUTY CLERK: Defendant ready in this matter?
- 13 MR. RUBINSTEIN: Defendant is ready, good morning,
- 14 your Honor.
- 15 THE COURT: Good morning.
- MR. RUBINSTEIN: Defendant is also represented by Ron
- 17 Rubinstein.
- 18 THE COURT: Good morning, Mr. Rubinstein, and Mr.
- 19 Karron.
- 20 What is the Government's projection of the length of
- 21 this trial?
- MR. KWOK: The Government expects to conclude its case
- 23 within a week.
- THE COURT: What about the defense?
- MR. RUBINSTEIN: Your Honor, I would hope that the

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- defense will take more than three days, but I don't think that
- the government has factored in the potential cross-examination
- 3 of their witnesses in their one week.
- 4 THE COURT: I don't know how many witnesses you have,
- 5 Mr. Kwok.
- 6 MR. KWOK: Right now we have seven witnesses, your
- 7 Honor.
- 8 THE COURT: The nature of them?
- 9 MR. KWOK: We have two witnesses who will be
- 10 testifying about the program and the rules governing that
- 11 program. We have a government witness, an auditor, who will
- 12 demonstrate that the rules were broken and demonstrate how the
- 13 money was in fact spent. We have another witness, another
- 14 auditor accountant that the defendant hired to conduct a audit
- of the company's books. And the remaining witnesses were all,
- 16 at one time or another, the defendant's company's employees who
- 17 would testify as to what happened and the considerations they
- 18 had with the defendant about these various things that are in
- 19 dispute.
- 20 THE COURT: I see. Those will be short witnesses, I
- 21 presume. And the --
- 22 MR. KWOK: I believe they would be short.
- 23 THE COURT: The accounting may be long.
- MR. KWOK: Maybe slightly longer. But we have tried
- 25 our best, and we will continue to try to streamline the

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- 1 presentation of evidence.
- 2 THE COURT: Well, from the -- I was wondering after
- 3 Friday when I got notice of the expert witnesses, whether some
- 4 of the facts couldn't be stipulated. Mr. Rubinstein.
- 5 MR. RUBINSTEIN: I was thinking of that myself after I
- 6 received the Government's letter of May 13th. It seemed to me
- 7 that it may well be that we can stipulate, because it doesn't
- 8 sound like the issue as framed by the Government's response on
- 9 May 30th is, basically, we're not contesting that this can be
- 10 done. We're saying that because it wasn't agreed by the
- 11 program, NIST or ATP that, therefore, it's not allowable.
- 12 THE COURT: There are two prongs, as I understood it,
- and I haven't read the 3500 material -- I see it's four
- volumes, which is a little daunting.
- 15 But the two issues that I'm rasing; one, they're
- 16 maintaining that there has to be a written benefit program,
- and, as I understand it, they're unaware of any written benefit
- 18 program.
- 19 Now, secondly they're saying that the grant did not
- 20 provide for its funds to be expended in this way. Of course
- 21 that would involve their proving that grant funds were used as
- 22 opposed to CASI's funds, which raises the question about how I
- 23 charge this matter.
- MR. RUBINSTEIN: Well, your Honor, our position is
- 25 that although the question isn't --

Τ	TH	iE COURT:	AJ	pparently	THE	ere	s no	question	tnat	the	2
2	funds were	expended	in	certain,	in	a c	certai	n fashior	ı. So	ome	of

- 3 the funds were. In other words, I gather that from the nature
- 4 of the defense, that the experts who testify, that you're
- 5 proffering, would testify that, I guess, but these funds were
- 6 expended in this way, but it's perfectly appropriate for them
- 7 to be expended in this way in view of the, the law pertaining
- 8 to cafeteria plans. That's sort of what I thought the defense
- 9 was.
- 10 MR. RUBINSTEIN: Yes, your Honor. The defense is very
- 11 simply that Dr. Karron had no intent to do anything -- to do
- 12 anything that rises to the level of criminal responsibility.
- 13 And that the fact that there wasn't a, quote, written plan in
- 14 place is not really relevant on the issue of intent. It goes
- 15 to the issue of intent, all right, and the question is that, as
- 16 the government seems to concede, that these kind of fringe
- benefits under other circumstances might be bona fide if we
- 18 could work out a stipulation on that, then there's no need for
- 19 the expert witnesses. The question then comes whether or not
- 20 spending that money for these fringe benefits without a written
- 21 plan is a question for the jury, whether it rises to the level
- 22 of criminal activity.
- 23 So the reason I was going to call Mr. Sapin and Miss
- 24 LeClair, was to establish the bona fide of the expense itself
- 25 because there are people who may not think that certain medical

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- 1 expenses should be reimbursed by the employer, but in fact
- these kind of medical expenses are reimbursed by employers in
- 3 certain fields, and my experts inform me Microsoft permits
- 4 these kind of expenses, and so that's the issue -- that's our
- 5 issue. If they're not --
- 6 THE COURT: That then raises a question -- there are
- 7 two questions involved. One, as I see it, one was whether or
- 8 not the -- it involves, in part, what funds were used; were
- 9 they grant funds or were they the corporate credit for these
- 10 expenses. If the corporation could afford these expenses with,
- or borrowed for these expenses, then that's -- your defense is
- 12 that, okay, maybe there wasn't a written plan. But that goes
- 13 to his intent.
- 14 The second issue is whether or not grant funds were
- 15 used, and if the government can prove that grant funds were
- 16 used for these expenses, and that it violated the terms of the
- 17 grant, then the question of the defendant's intent with respect
- 18 to the grant funds is the issue, whether it was reasonable for
- 19 him under the circumstances to believe he could expend grant
- 20 from the monies for this purpose. That's a separate issue from
- 21 whether or not the defendant thought that companies often
- 22 covered people for extraordinary expenses of this sort under a
- 23 cafeteria under their plans and, therefore, what I'm doing is
- 24 perfectly all right as far as it goes as a company expenditure.
- Now, maybe I'm -- maybe my analysis is wrong, but it SOUTHERN DISTRICT REPORTERS, P.C.

- 1 seems to me that that's the way it breaks down; whether that
- was a reasonable belief on his part that he could go ahead and
- 3 do it because he heard that other companies did that. That's a
- 4 separate issue from going to his intent and the issue of the
- 5 grant monies being reasonable, a reasonable belief that the
- 6 grant monies could be spent for the purpose. I don't know how
- 7 the proofs go, but those are the two issues that are being
- 8 raised and should be separately addressed.
- 9 Mr. Kwok would like to talk?
- 10 MR. KWOK: No, I think your Honor is exactly right.
- 11 We pointed out in our letter of May 30th, we don't really
- 12 concede anything. We just think that it's beside the point. I
- don't know what cafeteria plans adopted by other companies say.
- 14 We simply take the position that it's irrelevant in this case,
- 15 because the government will prove that the medical expenses
- 16 were expended using grant funds. And what other companies
- might have done in corporate America simply has no bearing on
- 18 the facts at issue in this case.
- 19 THE COURT: Well, that's what the -- if that's what
- 20 the Government's proof will be, and that's what the
- 21 Government's going to proceed in the case, then we go back to
- 22 the original arraignment, original indictment and whether we
- 23 have to -- this morning we've got to arraign the defendant on
- 24 the second -- the proposed superseding indictment.
- But it seems to me the proposed superseding indictment SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 means that the Court should only require that CASI funds were
- 2 used; whereas as I read the original indictment, and a more
- 3 restrictive reading was involved and there the government had
- 4 to prove that grant funds were used for improper purposes.
- 5 MR. KWOK: I see.
- 6 THE COURT: You see my distinction.
- 7 MR. KWOK: I see your distinction, your Honor, and
- 8 that's why we went to supersede the indictment because we want
- 9 to preserve the legal --
- 10 THE COURT: You want to have it both ways. But now --
- 11 MR. KWOK: And I think we are entitled to argue it
- 12 both ways to the jury. Not only is there no --
- 13 THE COURT: If you're going to argue it both ways to
- 14 the jury, then I think Mr. Rubinstein may be -- maybe, I'm not
- 15 sure, but may be entitled then to raise the issue of this
- 16 intent issue through these expert witnesses by proof, that
- other companies in fact do this and that there are -- it's a
- 18 reasonable belief on his part that company funds could be spent
- 19 for this way.
- 20 MR. KWOK: I mean, your Honor, the government's
- 21 concern is that even whatever there may be any slight
- 22 evidentiary value to that type of testimony, we believe that
- 23 under Rule 403 it should not be admitted simply because the
- 24 risk of unfair prejudice to the government, and confusion of
- 25 the issues is so great. As Mr. Rubinstein just proffered now,

- 1 that witness will be testifying mostly about, you know, issues
- 2 concerning transgender people, which we do not intend to focus
- 3 on at this trial. And our fear is that should those testimony,
- 4 which is on its face is irrelevant, come in, that is what this
- 5 trial may be involving to, and we simply have no interest in
- 6 prolonging this trial to talk about all these other things.
- 7 THE COURT: As long as the -- I've got to be -- you
- 8 said prejudice to the government, but I've got to think about
- 9 prejudice to the defense. If you're going to have the broader
- 10 case with two prongs, then I may feel that in fairness to the
- 11 defense, they have to be entitled to present their defense to
- 12 that second prong. And so that's the horns of the dilemma you
- 13 put the Court in.
- 14 (Pause)
- 15 MR. KWOK: Your Honor, just so we're clear about our
- 16 options that we are looking at, is your Honor still going to be
- inclined to charge the jury about the absence of a tracing
- 18 requirement if we now tell you that we are not -- we're simply
- 19 going to argue that CASI funds are all federal funds, but,
- 20 nonetheless, when it comes time for the jury charge, would that
- 21 legal instruction still be included in the charge to the jury?
- 22 THE COURT: Just the CASI funds?
- 23 MR. KWOK: That something to the effect of, to satisfy
- the element of proving \$5,000 or more of misspent money, the
- 25 government does not need to trace the amount that it's --

- 1 THE COURT: I think you do have to prove the trace --
- I don't think you have to trace the amount, but I think you
- 3 have to show that the expenditure was made by using those
- 4 funds.
- 5 MR. KWOK: Can I have a moment your Honor?
- 6 (Pause)
- 7 MR. KWOK: Your Honor, we don't want to give up on our
- 8 legal point. So if the defense is inclined because of the way
- 9 request to charge is worded now to bring in these experts, we
- 10 still stand on our objections, but we are understand your
- 11 Honor's position.
- 12 THE COURT: Then we better arraign the defendant on
- 13 the superseding indictment. Do we have a copy of it, Robert?
- 14 He stepped out. Maybe I have it, S2?
- MR. RUBINSTEIN: I have a copy.
- 16 THE COURT: All right.
- MR. RUBINSTEIN: Does the Court need one, your Honor?
- 18 THE COURT: I'll arraign the defendant at this time.
- 19 Is that convenient? I have a copy.
- MR. RUBINSTEIN: Oh, fine.
- 21 THE COURT: Daniel B. Karron -- Mr. Rubinstein, have
- 22 you seen a copy of the superseding indictment charging the
- 23 defendant with stealing \$5,000 of property of CASI, while CASI
- 24 was a recipient of federal grant of more than \$10,000 in a
- 25 single year?

- 1 MR. RUBINSTEIN: Yes, your Honor.
- 2 THE COURT: And have you discussed the superseding
- 3 indictment with your client?
- 4 MR. RUBINSTEIN: I have, your Honor.
- 5 THE COURT: You wish to have the superseding
- 6 indictment read to the defendant?
- 7 MR. RUBINSTEIN: No, your Honor. We waive formal
- 8 reading of the superseding indictment S2, and defendant enters
- 9 a plea of not guilty, your Honor.
- 10 THE COURT: Mr. Karron, have you seen a copy of the
- 11 superseding indictment charging you with stealing \$5,000 or
- 12 more of property from CASI during the period that it was
- 13 receiving a \$10,000 grant or grant in excess of \$10,000 from
- 14 the federal government?
- THE DEFENDANT: Yes, I have, your Honor.
- 16 THE COURT: And have you discussed the superseding
- indictment with Mr. Rubinstein?
- 18 THE DEFENDANT: Yes, I have, your Honor.
- 19 THE COURT: Do you wish to have the superseding
- 20 indictment read to you at this time?
- THE DEFENDANT: No, your Honor.
- 22 THE COURT: And would you like a plea of not guilty
- 23 entered in your behalf at this time?
- THE DEFENDANT: Yes, your Honor.
- THE COURT: Plea of not guilty will be entered on

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- behalf of the defendant, Daniel B. Karron. All right.
- Now, the next thing I think I should bring up is that
- 3 with respect to the voir dire, I have -- I think I've included
- 4 in the voir dire all the questions the government requested,
- 5 and I have all the questions that the defense has requested,
- 6 except I've had a little trouble with the phraseology of one of
- 7 Mr. Rubinstein's requests, which was a request that, as
- 8 follows: Can you respect an individual's belief that he or she
- 9 was born the wrong gender?
- 10 I have trouble with respect as wording that question.
- 11 I rephrased it to say. Can you treat, without bias or
- 12 prejudice, any witness or defendant who states that he or she
- believes he or she was born of the wrong gender.
- 14 MR. RUBINSTEIN: That's acceptable, your Honor.
- 15 THE COURT: All right.
- MR. RUBINSTEIN: That's fine.
- 17 THE COURT: All right.
- 18 MR. RUBINSTEIN: I did have one additional --
- 19 THE COURT: It seemed to me respect was not really a
- 20 the proper question.
- MR. RUBINSTEIN: I agree.
- 22 THE COURT: Whether there would be any bias or
- 23 prejudice --
- MR. RUBINSTEIN: Yes.
- 25 THE COURT: -- with respect to a person of that sort.

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- 1 MR. RUBINSTEIN: I was wondering if we shouldn't, in
- view of the fact there's apparently going to be voluminous
- 3 financial records or at least financial records submitted to
- 4 the jury in this case, whether or not you should inquire as to
- 5 the jurors if the case involves a lot of numbers or something,
- 6 is that going to present a problem.
- 7 THE COURT: Well, that's a good question. Are there
- 8 going to be significant financial records?
- 9 MR. KWOK: There are a lot of records, a lot of
- 10 financial records in the underlying case, but our witnesses
- 11 will testify to summary charts and records that they've
- 12 prepared in the course of analyzing those records. So our hope
- is that when these witnesses testify, it will come across in a
- 14 very very simple straight forward manner about what they
- 15 exactly did.
- 16 THE COURT: What about the jury will have a question
- 17 of whether the summary charts, et cetera, accurately reflect
- 18 the underlying records.
- 19 MR. KWOK: I guess that could be a subject for Mr.
- 20 Rubinstein's cross-examination. But our position is that it is
- 21 very simple. It's essentially nothing more than data entry and
- 22 then adding up the numbers and creating some charts to see
- 23 where the money went. I don't believe that financial
- 24 sophistication of any kind is really necessary to be qualified
- 25 as a juror in this case.

- 1 THE COURT: Well, that's why I asked the question
- about stipulation, because it seemed to me that a stipulation
- 3 that the parties know what the records are, and if we could
- 4 get -- the issue is whether they were proper expenditures or
- 5 not.
- 6 MR. KWOK: I believe we --
- 7 THE COURT: But couldn't the parties enter into a
- 8 stipulation with respect to the fact that these expenditures
- 9 were made?
- 10 That would eliminate the financial, a lot of financial
- 11 records being put into before the jury, who could -- to
- 12 determine whether or not the summaries accurately reflect the
- 13 underlying records.
- 14 MR. KWOK: Your Honor, we have sent over a proposed
- 15 stipulation to --
- 16 THE COURT: Why don't you talk to Mr. Rubinstein now.
- 17 I don't want to get into that. I was just trying to see if --
- 18 MR. RUBINSTEIN: There's -- we have certain problems
- 19 with their version of financial records. That's why we
- 20 haven't -- there's one stipulation outstanding that we are
- 21 still trying to work out. Because, frankly, Judge, it's a very
- 22 unusual situation that the government does not have a general
- 23 ledger, and so --
- 24 THE COURT: Who has the general ledger, no one?
- MR. RUBINSTEIN: We've created one recently off

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- 1 documents that we have, but -- in other words, they're going to
- 2 have witnesses testifying as to what they call summaries, but
- 3 the question is going to be, what is the basis for the summary
- 4 and where is -- where are the records that these summaries were
- 5 based upon, so that a -- and that, depending on those
- 6 witnesses' testimony, will determine what the defense --
- 7 THE COURT: I would've thought that those questions
- 8 could be lined up pretrial.
- 9 MR. RUBINSTEIN: We tried to, Judge, but we kept
- 10 asking for --
- 11 THE COURT: Because you have the situation where the
- 12 computers were -- records were. So I don't know how to
- 13 describe it, unusual.
- MR. RUBINSTEIN: That's a kind way to describe it,
- 15 your Honor. 19 terabytes of information is kind of
- 16 extraordinary, but apparently these computers that accountants
- 17 have have their own programs that they insert and what have
- 18 you. But there are issues as to these records. So far we
- 19 haven't been able to resolve it. We're still working on it.
- 20 THE COURT: Well, is there any dispute that the
- 21 certain funds were expended for certain purposes? It seems to
- 22 me that that ought to be able to be, to be stipulated. If
- 23 there were these costs, they have to be paid for by somebody,
- and there ought to be entries showing that those expenses were
- 25 made and that would put an end to it. It doesn't matter -- I

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don't understand why that can't be stipulated to and get

- 2 through this trial.
- 3 MR. KWOK: We would definitely welcome that
- 4 stipulation. I would direct --
- 5 THE COURT: If get into a mountain, that's possible,
- 6 of financial records, there is a possible jury determination
- 7 that they'll make the decision based on the mountain of
- 8 financial records and not based on any particular analysis of
- 9 it. So it seems to me that it's -- if monies were expended for
- 10 a certain purpose, that it to be clear that they were to both
- 11 parties that they were expended for those purposes.
- 12 MR. RUBINSTEIN: Judge, I know a lot of people think,
- and I guess a lot of my colleagues on the defense side think
- 14 that confusion is good for the defense.
- 15 THE COURT: Okay.
- 16 MR. RUBINSTEIN: But I don't. I'm not -- I'm not an
- 17 advocate of that.
- 18 THE COURT: Well --
- 19 MR. RUBINSTEIN: All right. If the government gives
- 20 me --
- 21 THE COURT: I think it sometimes prejudices the
- defense.
- MR. RUBINSTEIN: Pardon?
- 24 THE COURT: I think it sometimes prejudices the
- 25 defense, but --

- 1 MR. RUBINSTEIN: If the government gives me what
- 2 checks and what have you, that they're claiming were authored
- and that are improper, and they square with my records of what
- 4 has been authored at this point, I assure you we will do
- 5 everything we can to work it out.
- 6 THE COURT: Okay.
- 7 MR. KWOK: I would --
- 8 THE COURT: How long is the trial going to take?
- 9 MR. RUBINSTEIN: Yes.
- 10 MR. KWOK: I think the government has already provided
- 11 these materials. I direct the defense's attention to
- 12 government exhibits 110 to 115. Those are, essentially, the
- 13 summaries and spread sheets and charts that we continued to
- 14 elicit from the witness. If the defense is willing to
- 15 stipulate to that, we welcome that very much, and I think it
- 16 would shorten the trial drastically.
- 17 THE COURT: Were the payments made, Mr. Kwok, by
- 18 check?
- MR. KWOK: They were.
- 20 THE COURT: Or were they made by electronic payments?
- 21 MR. KWOK: They were made by variety of means,
- 22 including written checks, including electronic transmittals,
- 23 including an American Express cards. We have provided all
- 24 those underlying records. And the exhibits that I just
- 25 mentioned are summaries of every line item of those entries.

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- 1 And it also shows where the money came from, how the
- 2 outstanding balances were paid. And if the defense would look
- 3 at that and compare those and do a spot check of the underlying
- 4 records, and so that they have confidence that we fairly and
- 5 accurately captured the raw data, again, we would very much
- 6 welcome that stipulation.
- 7 MR. RUBINSTEIN: I'll look at it, Judge. But I think
- 8 what they're missing is that they they're going on the
- 9 assumption that every penny that CASI spent was money that they
- 10 received from the federal government pursuant to this ATP
- 11 grant, and that's just not accurate. So I'll look at those
- 12 records, Judge, during the break between now and when the jury
- 13 gets up, if we have a break. And I have them in the back. I
- 14 have big books.
- 15 THE COURT: Well, then, Mr. Rubinstein is asking for
- three alternates, because he thinks it's going to go three
- weeks.
- 18 MR. KWOK: We have no objection to that. I don't -- I
- 19 hope it doesn't take three weeks, but we have no objection.
- 20 THE COURT: I don't want to tell the jury it's going
- 21 to take three weeks, but I feel that I'll have to tell them it
- 22 might. We're in June, that's graduation period, and we're
- 23 going to lose jurors for that reason.
- MR. RUBINSTEIN: Lots of weddings, your Honor.
- THE COURT: What?

- 1 MR. RUBINSTEIN: Lots of weddings.
- 2 THE COURT: Lots of weddings and lots of graduations.
- 3 Do we have a jury?
- 4 THE DEPUTY CLERK: Not yet. They're still downstairs.
- 5 MR. RUBINSTEIN: Your Honor, there's two other matters
- 6 I'd like to address with the Court.
- 7 THE COURT: Yes.
- 8 MR. RUBINSTEIN: First, the manner in which to refer
- 9 to Dr. Karron during the course of the trial. He has been
- 10 indicted as Daniel B. Karron, and actually that was -- he
- 11 doesn't really go by that name any longer. I was thinking that
- 12 possibly call him Dr. D. B. Karron, because I just intend to
- 13 refer to him as Dr. Karron, personally.
- 14 THE COURT: He's a Ph.D., is that right?
- MR. RUBINSTEIN: Yes, your Honor.
- 16 MR. KWOK: We have no objection. We'll try to refer
- 17 to him as Dr. Karron as well.
- 18 THE COURT: All right.
- 19 MR. RUBINSTEIN: Your Honor, the last matter refers to
- 20 a subpoena that the government has served on defense, and I
- 21 would ask your Honor to quash this subpoena, 17C subpoena.
- THE COURT: And the grounds?
- 23 MR. RUBINSTEIN: Yes, your Honor; that the government
- 24 must establish under Rule 16C that the material they are
- 25 seeking are relevant, admissible and specifically identified.

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1 By this definition, they can not use this subpoena as an end

- 2 run around Rule 16.
- 3 Moreover, it is evident from the nature of the
- 4 subpoena, which is conditional the defendant testifying.
- 5 THE COURT: I'm sorry?
- 6 MR. RUBINSTEIN: Which is conditional if the defendant
- 7 testifies, that the government is seeking impeachment material.
- 8 And I submit that this is absolutely prohibited on the use of
- 9 Rule 17C subpoena for impeachment purposes. And I cite U.S.
- 10 versus Weissman, 2002 Westlaw, 31857510 -- 31857510, Southern
- 11 District of New York case.
- 12 THE COURT: 318?
- MR. RUBINSTEIN: 575.
- 14 THE COURT: Federal Supplement, 575?
- MR. RUBINSTEIN: It's Westlaw, your Honor.
- THE COURT: Oh, I'm --W-e-i-s-m-a-n?
- MR. RUBINSTEIN: It's W-e-i-s-s-m-a-n.
- 18 THE COURT: I better get the cite again because I'm
- 19 used to Federal --
- 20 MR. RUBINSTEIN: I'll give it to you. The Judge
- 21 was --
- 22 THE COURT: 1990?
- 23 MR. RUBINSTEIN: BSJ, December 26, 2002. I'll give
- 24 you --
- THE COURT: BSJ, Barbara Jones.

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- 1 MR. RUBINSTEIN: Robert.
- THE DEPUTY CLERK: Thank you.
- 3 THE COURT: You got a copy?
- 4 Well, as I read the case, you're relying on Mr., the
- 5 Jones, Barbara Jones case. She was dealing with a situation
- 6 where the defendant sought to obtain the records of a third
- 7 party prior to trial, third party being not -- not the
- 8 defendant's records. So why is it relevant to this case, Mr.
- 9 Rubinstein?
- 10 MR. RUBINSTEIN: Well, it shows that they're just not
- 11 entitled to records for cross-examination purposes. You know,
- 12 we also have the potential of a fifth amendment issue. I never
- 13 saw a defendant being subpoenaed to get the defendant's
- 14 personal records and tax returns. I mean, they have the
- 15 ability to get tax returns.
- 16 THE COURT: Well, this subpoena is only to take place
- in the event that the defendant takes the stand. Now, I don't
- 18 know whether -- I don't see the -- I'll take further briefing
- 19 on it, but I don't the Barbara Jones decision here deals with
- 20 this situation. This was to use in cross-examination, as I
- 21 understood it, subpoena in the event. So I need some, I need
- 22 some memorandum supporting your motion to quash, Mr.
- 23 Rubinstein, and the government can reply. You can give that to
- 24 me in the next day or so.
- MR. RUBINSTEIN: Fine, your Honor.

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- 1 THE COURT: Okay, anything else to take up?
- 2 MR. RUBINSTEIN: Yes, your Honor. I just want to
- 3 submit to your Honor -- I hope it's legible enough, and some of
- 4 these are duplicate names what the government has indicated
- 5 might be relevant names that will come up.
- 6 THE COURT: Oh, yeah, we better have the names of
- 7 people who will testify.
- 8 MR. RUBINSTEIN: Let me check the two so I could cross
- 9 out my list so you don't have to --
- 10 THE COURT: I don't have the Government's list.
- 11 MR. KWOK: I have an extra copy. I believe I handed
- one to your Deputy.
- 13 THE COURT: My clerk? He's not here.
- MR. KWOK: I can hand you my copy.
- 15 THE COURT: How would I know who these people are? In
- other words, some of these names are pretty pretty common, Mr.
- 17 Kwok. I need some identification for the jurors.
- 18 MR. KWOK: Which names are you referring to, your
- 19 Honor?
- 20 THE COURT: Well, there's a name -- number five is the
- 21 person named Farnsworth, who is a -- I don't know where they
- 22 come from or where they're located or anything of this sort.
- 23 There's a pitcher for the Yankees by that name and -- kind of
- 24 wild -- but I suppose he might have a wife or something, but
- it's not an uncommon name. Feldman is a pretty common name.

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- 1 MR. KWOK: I understand, your Honor. If we could
- 2 propose making further inquiries if they answer affirmatively
- 3 to those, because I understand --
- 4 THE COURT: Just where they live. I mean, these
- 5 people, the jurors come from the Southern District. If these
- 6 people live in Washington or something like that, then their
- 7 concerns will be alleviated. If that person is a member of
- 8 such and such family that lives down the street, you know.
- 9 MR. KWOK: Sure, we'll try to refine the list for your
- 10 Honor.
- 11 THE COURT: The jury should be in in about five
- 12 minutes, ten minutes. So let's -- and I have to go get a and
- 13 so let's -- try and get them up here early. Somebody -- I need
- 14 some identification. We have some address or something of that
- 15 sort, Mr --
- 16 MR. RUBINSTEIN: Yes, I'll give you the out-of-state
- ones, your Honor.
- 18 THE COURT: This list -- my Lord, this is a long list.
- 19 MR. RUBINSTEIN: The names are going to come up during
- 20 the trial. They're not necessarily -- they're not all
- 21 witnesses, Judge, but they're just names that are going to be
- 22 mentioned, we believe, during the course of the testimony. I
- 23 thought that's one of the things that the Court wanted.
- 24 THE COURT: Well, I see one is a plumbing company so.
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- 1 Washington?
- 2 MR. KWOK: Gatersburg, Maryland.
- 3 THE COURT: Tia Lorraine.
- 4 MR. KWOK: That we don't know. We got that name from
- one of the e-mails the defense produced.
- 6 THE COURT: Okay. What am I going to do about your
- 7 list, Mr. Rubinstein?
- 8 MR. RUBINSTEIN: Well for out-of-staters, your
- 9 Honor --
- 10 THE COURT: I mean Dunn Levy is a very common name.
- 11 MR. RUBINSTEIN: Pardon?
- 12 THE COURT: Dunn Levy and Levin Mason, very common
- 13 names.
- 14 MR. RUBINSTEIN: Dunn Levy is a bookkeeper from New
- 15 York.
- 16 THE COURT: Murphy is a common name, but that's got
- 17 some identification here. John Mason, Miller, Ross.
- 18 MR. RUBINSTEIN: Miller is an attorney, your Honor.
- 19 THE COURT: In New York?
- MR. RUBINSTEIN: Yes.
- 21 THE COURT: Maybe I ought to give you the list and put
- 22 some address on it.
- 23 MR. RUBINSTEIN: Okay. Murphy is a professor.
- 24 THE COURT: I'll give you back the list so you can --
- MR. RUBINSTEIN: Okay.

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- 1 THE COURT: The jury's here.
- Why don't I give this to you, Mr. Rubinstein. You can
- 3 fill it in. We'll get the jury in and send them to -- it's my
- 4 practice to get them to go to the men's and ladies' room before
- 5 we start.
- 6 Maybe you ought to do the same.
- 7 THE COURT: All right? Bring them in.
- 8 THE DEPUTY CLERK: Judge, if they're going to use --
- 9 if counsel are going use the restroom, they'll have to use the
- 10 restroom outside because the jurors are going to be using the
- 11 one in here.
- 12 MR. RUBINSTEIN: You want us to do that before they
- 13 come in?
- 14 THE DEPUTY CLERK: I don't know.
- 15 THE COURT: What do you want to do? You want to use
- 16 the restroom now?
- 17 MR. RUBINSTEIN: Yeah, but I guess I'll wait till they
- 18 all walk in rather than collide with them.
- 19 THE COURT: All right. Okay. They'll do it after
- 20 they've started using the restrooms, they'll use the one
- 21 outside.
- 22 Don't forget the biographical material for those
- 23 witnesses, Mr. Rubinstein.
- MR. RUBINSTEIN: Yes, your Honor.
- 25 (Recess)

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- 1 (A jury of 12 and 4 alternates was chosen and sworn)
- 2 THE COURT: Mr. Monteguedo has to give those jurors
- 3 slips.
- 4 So, I will give you these starting instructions,
- 5 because some of you may never have served as jurors before and
- 6 not know exactly what to expect, and also some people may not
- 7 have served for some time and could use a brush-up on what jury
- 8 service will be like in this case.
- 9 So, as I told you this morning, in the American system
- 10 of justice the judge and the jury have separate roles. My job
- is to instruct you as to the law that governs or controls the
- 12 case, and I will give you those instructions at the end of the
- 13 trial. Your job as jurors is to determine the facts based on
- 14 the evidence presented at the trial.
- 15 You are the only triers of fact, and your decisions on
- 16 the factual issues will determine the outcome of this lawsuit.
- 17 I want to caution those of you that have watched TV
- 18 versions of trials not to be distracted into attempting to
- 19 evaluate the performance of the lawyers in the court. It is
- 20 the parties whose interest will be affected by the outcome of
- 21 this trial, and your determination should be based solely on
- the evidence in this case.
- 23 You must pay close attention to all the evidence
- 24 presented. Evidence consists only of the testimony of
- 25 witnesses, documents and other things admitted as evidence or

- 1 agreed to by the attorneys.
- 2 Certain things are not evidence and must not be
- 3 considered by you. I will list them for you now:
- 4 One, statements, arguments and questions by lawyers
- 5 are not evidence, nor are my own statements to you.
- 6 Two, objections to questions are not evidence.
- 7 Lawyers have an obligation to their client to make an objection
- 8 when they believe evidence being offered is improper under the
- 9 laws of evidence. You should not be influenced by the
- objection or by the court's ruling on that.
- 11 If the objection is sustained, ignore the question and
- 12 any answer that has been given. If it is overruled, treat the
- 13 answer like any other. If you are instructed that some item of
- 14 evidence is received for a limited purpose only, you must
- 15 follow that instruction.
- 16 Third, testimony of the court is excluded. I told you
- 17 to disregard that testimony, and it must not be considered.
- 18 Fourth, anything you may have seen or heard outside of
- 19 the courtroom is not evidence and must be disregarded.
- 20 You are to decide the case solely on the evidence
- 21 presented here in the courtroom. In deciding the facts of the
- 22 case, you will have to decide the credibility of the witnesses,
- 23 that is, how truthful and believable they are.
- 24 Now, how do you decide what to believe and what not to
- 25 believe? Well, you are going to listen to the witnesses, watch

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- 1 them and observe them and then decide as you would decide such
- questions in your ordinary life. Did they know what they were
- 3 talking about? Were they candid, honest, open and truthful, or
- 4 did they have a reason to falsify, exaggerate or distort their
- 5 testimony? Sometimes it's not what a witness says but how he
- 6 or she says it that may give you a clue as to whether or not to
- 7 accept that witness's version of an event or an incident as
- 8 credible and believable. In short, the way a witness testifies
- 9 may play an important part in your reaching a judgment as to
- 10 whether or not you can accept the witness's testimony as
- 11 reliable.
- 12 As the trial proceeds, you may have impressions of a
- 13 witness, but you may not allow these impressions to become
- 14 fixed or hardened, because if you do, in a sense you foreclose
- 15 consideration of the testimony of other witnesses or other
- 16 evidence that may be presented after the witness you heard, and
- that would be unfair to one side or the other.
- 18 A case can be presented only step by step, witness by
- 19 witness, before all the evidence is before you.
- 20 We know from experience that frequently we will hear a
- 21 person give his version of an event which sounds most
- impressive and even compelling, and yet when we hear another
- 23 person's version of the same event, or even the same witness
- 24 cross examined with respect to it, what seemed to be very
- 25 compelling and impressive may be completely dissipated or

- 1 weakened. I am simply saying or trying to say to you in very
- 2 simple terms: Remember that there may be another side to any
- 3 witness's testimony.
- 4 You will use your common sense and good judgment to
- 5 evaluate each witness's testimony based on all of the
- 6 circumstances.
- 7 I cannot emphasize too strongly that you must keep an
- 8 open mind until the trial is over. You should not reach any
- 9 conclusions until you have all the evidence before you. In
- 10 order to ensure that you decide the case only on the evidence
- 11 and are not influenced by anything that might occur outside the
- 12 courtroom, I must give you a set of specific instructions.
- 13 First, do not discuss this case amongst yourselves or
- 14 with any other person. You will have the opportunity and
- 15 indeed the duty to discuss the case amongst yourselves after
- 16 all the evidence is in and the case is given to you to discuss
- 17 and decide in the jury room. Now let me explain the reasons
- 18 for that.
- 19 The reason for that rule is, first, if you start
- 20 discussing it beforehand, before you have all the evidence
- 21 before you, you won't have all the evidence before you, and you
- 22 are apt to reach a prejudgment instead of reaching a balanced
- 23 judgment based on all of the evidence. Jury deliberations
- 24 contemplate that those conferences will take place after trial
- when all of you are assembled in the jury room sitting around

- 1 the table, each of you exchanging views and what have you, and
- 2 each of you listens to the others, and that's the way the jury
- deliberation is supposed to be conducted.
- 4 If you start having conferences before all the
- 5 evidence is in, the chances are you won't have everyone around
- 6 the room or sitting around the table discussing that issue but,
- 7 rather, you only have a few of you. Furthermore, therefore the
- 8 other people would be excluded from the deliberation and
- 9 wouldn't be able to exchange their views. Furthermore, you
- 10 wouldn't have all of the evidence before you. So, the rule is
- 11 you should not discuss the case until the case has been
- 12 completed.
- 13 Next, you are not to read anything in the newspapers
- or elsewhere about this case if that should occur. Now, I
- 15 don't think that that's going to occur, but what sometimes
- occurs is that there are articles in the newspaper that bear on
- 17 a case and that are not directly relevant but they have some
- 18 relevance. The trouble with viewing that or reading those
- 19 articles if they seem to bear on the case, is that you are
- 20 obliged to tell me that you have read something that bears on
- 21 it, and then I have to conduct what is called a tainting
- 22 hearing, and what I have to do is make sure that this outside
- 23 bit of newspaper or what you saw on television didn't taint
- you, in other words, cause you to be less than fair and
- impartial in the case, and that you by recounting what you saw

- on television or read on the radio didn't taint the other
- 2 jurors. So, I have been through a case in which it took almost
- 3 half a morning to conduct a taint hearing, and no jury needs
- 4 that. That's an extra day of service, and you have better
- 5 things to do. You are all giving up your time. So, don't read
- 6 anything that bears on the case. Just don't do it. It just
- 7 means that we will have to have a taint hearing, and that's
- 8 time.
- 9 Next, you are not to allow anyone to speak to you
- 10 about this case. If you are approached by anyone to speak
- 11 about the case, politely tell them that the judge has directed
- 12 you not to do so. If any person seeks to contact you about the
- 13 case, you are required to report the incident promptly to me.
- 14 Also, be sure that I am informed if any person that
- 15 you know comes into the courtroom. Now this is a public trial,
- 16 and it's perfectly appropriate that they come into the
- 17 courtroom, but it is important that you do not hear from your
- 18 friend what may have happened in the court while the jury was
- 19 not present. If you should see a friend or relative come into
- 20 the court, please send a note to me through the clerk at your
- 21 first opportunity, and then I can take steps to make sure that
- 22 they don't hear something that could possibly be related to you
- 23 and taint the jury.
- 24 The attorneys, the parties and the witnesses are not
- 25 supposed to talk to the jury outside the courtroom, even to

- 1 offer a friendly greeting, and the jury is not supposed to talk
- 2 to them. So, if you happen to see any of them outside the
- 3 courtroom, they will not and should not speak to you. Please
- 4 take no offense at this; they will only be acting properly and
- 5 professionally by not doing so.
- 6 Finally, let me say a few words about trial procedure.
- 7 First, the lawyers have the opportunity to make opening
- 8 statements to you, and they will do that shortly. These
- 9 statements are not evidence. They serve no purpose other than
- 10 to give you an idea in advance of the evidence what the lawyers
- 11 expect you to hear from the witnesses. These statements allow
- 12 the lawyers to give you a preview of what this case is all
- about, but the only evidence will come from the witnesses and
- 14 the exhibits.
- 15 Now, after the opening statements you will hear the
- 16 testimony of the witnesses. The government's witnesses go
- 17 first. Each witness will first give direct testimony. Then he
- 18 may be cross-examined by the other side. Sometimes there is
- 19 redirect testimony and recross examination. Also, exhibits and
- 20 stipulations of fact may be received into evidence.
- 21 Following the government's case, the defendant may if
- 22 he wishes present witnesses and other evidence. Those
- 23 witnesses, if the defendant chooses to present witnesses, will
- 24 be examined and cross-examined just as the government's
- 25 witnesses were. If the defendant chooses to present evidence,

- 1 it's possible that the government would then present some
- 2 rebuttal to that evidence.
- 3 And after all the evidence has been received, the
- 4 lawyers then have an opportunity to sum up. They may review
- 5 the evidence and make arguments to you as to what conclusions
- 6 they think you should or should not draw from the evidence.
- 7 These arguments also are not themselves evidence, but they may
- 8 be helpful to you in reviewing the evidence during your
- 9 deliberations.
- 10 After these arguments, or summations as they are
- 11 called, I will give you detailed instructions as to the law
- 12 that applies and controls in this case, and you must follow my
- instruction. Then you will go to the jury room to deliberate
- 14 and discuss the evidence in order to decide the facts and
- 15 render a verdict.
- 16 All right. We will now begin with the government's
- opening statement. Mr. Everdell.
- 18 MR. EVERDELL: Thank you, your Honor.
- 19 Ladies and gentlemen, the defendant, Dr. D.B. Karron
- 20 cheated the government out of hundreds of thousands of dollars.
- 21 In 2001 the defendant got what many scientists can only hope to
- 22 get. He was given a \$2 million grant from the federal
- 23 government to conduct his scientific research, \$2 million of
- 24 taxpayer money, and the only thing that the government required
- in return for this money was that the defendant spend it on one

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- 1 thing and one thing only: His research, nothing else.
- 2 But the evidence will show that instead of putting
- 3 that money towards his research, the defendant chose to spend
- 4 much of that money on himself. For over a year and a half the
- 5 defendant used the grant money as his own personal piggy bank
- 6 to pay for personal expenses like meals at restaurants,
- 7 electronic gadgets like a GPS tracking device and a digital
- 8 camera, even a blender and shoe rack for his apartment, and he
- 9 bought all these things even though he was already paying
- 10 himself \$175,000 in salary out of the grant funds. And when
- 11 several different people told the defendant on multiple
- 12 occasions that he could not use the grant money to pay for
- 13 these sorts of things that he wanted to pay for, the defendant
- ignored them and did it anyway and in the end misspent roughly
- 15 half a million dollars.
- 16 Ladies and gentlemen, my name is Christian Everdell,
- 17 and together with my colleague Steve Kwok and case agents
- 18 Rachel Ondrik and Kirk Yamatani from the Department of Commerce
- 19 and paralegal Noha Moussa, we represent the government in this
- 20 trial.
- Now, in the course of the next few days you will hear
- from several witnesses, and you will see the evidence in this
- 23 case, and if you have ever taken part in a real life trial, you
- 24 will quickly see that it's not like it is on TV. It's not
- 25 going to be like a TV show like Law and Order where the

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Opening - Mr. Everdell

- 1 witnesses come in and they tell their story in chronological
- order and it's all wrapped up neatly in an hour. Instead, the
- 3 proof is going to come to you in bits and pieces, because each
- 4 witness knows his or her own small portion of the larger
- 5 picture of this case. So, this opening statement is my chance
- 6 to give you an overview, a road map, that I hope will help you
- 7 understand the evidence that's to come.
- 8 So, what will the evidence in this case show? You
- 9 will learn that in 2001 the defendant and his company, Computer
- 10 Aided Surgery, Incorporated, or CASI, applied for and received
- 11 a \$2 million grant from the federal government to pay for his
- 12 research in computer imaging. Now, this particular grant was
- 13 supposed to last for three years, with the \$2 million being
- 14 disbursed in installments over that three-year time period.
- 15 As you might expect, with such a large amount of
- 16 taxpayer money involved in this kind of grant, the federal
- 17 government has certain rules that the recipient must follow
- 18 when he receives this kind of money and what he can spend the
- 19 money on. You will hear what those rules are, but the main
- 20 rule is simple and straightforward and it's this: You must
- 21 spent grant funds on your research. That means that the grant
- 22 money must be spent on things that directly impact and further
- 23 the research. The funds cannot be used to pay for things such
- 24 as rent and utilities for your office space. Those costs are
- just the cost of doing business. Every company has those, and

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- 1 they are not covered under the grant. And it means that the
- 2 funds cannot be used to pay for personal expenses like meals or
- 3 personal debts. Those are not research costs, and they are not
- 4 covered either. And you will also hear that in order to keep
- 5 track of the grant money the government requires the grant
- 6 recipient to submit a budget that outlines what you are
- 7 spending your grant money on. All the categories of expenses
- 8 are laid out -- salary, travel costs, equipment costs -- and
- 9 again the rule is simple, you must stick to your budget. That
- 10 means if you tell the government you are going to spend the
- 11 grant money for certain things, then you must spend the grant
- 12 money for those things; and if you want to make any significant
- 13 changes to your budget, you must get approval in writing.
- 14 Now, those are the rules in a nutshell, and they are
- 15 basic, simple and easy to understand, and you will hear that
- 16 these rules were repeated for the defendant on several
- 17 different occasions by grant officials. You will also hear
- 18 that the defendant was given these rules when he received the
- 19 grant and signed a form acknowledging that he understood those
- 20 rules, and you will also hear that the defendant was told time
- 21 and time again by grant officials and by his own employees that
- 22 he could not use the grant funds to pay for the things he
- 23 wanted to pay for. But the evidence will show that the
- 24 defendant refused to listen to them and went ahead and used the
- 25 grant money as he wanted.

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Opening - Mr. Everdell

1	And how did he misspend this money? Well, to give you
2	just one example, ladies and gentlemen, you will hear the
3	defendant set up his company, CASI, in the living room of his
4	own apartment in Midtown Manhattan, and the evidence will show
5	that when CASI received its first installment of \$150,000 in
6	grant funds, the first thing the defendant did was transfer
7	\$75,000 of it, half of it, to himself and used it to pay for
8	personal debts like his credit card bills. And then he used
9	those same funds to pay himself several thousand dollars in
10	rent payments for CASI's use of his living room, despite the
11	fact that he was still living in his apartment and despite the
12	fact that he had been told specifically on multiple occasions
13	that rent was not an allowable expense under any circumstances.
14	The defendant's misuse of the grant funds does not end
15	there. You will also hear that he used grant funds to pay for
16	so-called equipment, electronic gadgets like a GPS tracking
17	device and a digital camera and household items like a blender
18	and shoe rack, items that had nothing whatsoever to do with his
19	research. And you will hear that the defendant used grant
20	funds to pay for thousands of dollars worth of dental and other
21	cosmetic medical procedures. And you will also hear about how
22	the defendant adamantly resisted efforts of everyone around him
23	to convince him that he was spending money on things that
24	weren't allowed and to fix what he had done before.
25	For example, you will learn that the defendant hired a
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- 1 bookkeeper to go through the company's books and records in
- 2 connection with the first year audit of his company, and when
- 3 that bookkeeper reclassified certain expenses and changed them
- 4 from grant expenses to nongrant expenses according to the
- 5 rules, the defendant went back into the books and changed them
- 6 right back again so that he could be sure that grant funds
- 7 could be used to pay for them.
- 8 The end result of all this, ladies and gentlemen, is
- 9 that the defendant has been charged in a one count indictment
- 10 with crime of misapplying government grant funds.
- 11 So, how is the government going to prove its case to
- 12 you? Here is how:
- 13 You will hear testimony from two of the government
- 14 officials that were assigned to administer the defendant's
- 15 grant, and they will explain to you what the rules of the grant
- 16 are and which expenses you can and cannot use grant funds to
- 17 pay for. And they will tell you how they spoke to the
- 18 defendant on numerous occasions both in person and on the phone
- 19 and told him over and over again that he could not use grant
- 20 funds to pay for things such as rent and utilities and other
- 21 nonallowable expenses. And you will hear from two auditors who
- 22 looked at the company's books, and they will tell you that when
- 23 they looked at the company's expenses and separated out the
- 24 expenses that were allowable under the grant from the expenses
- that were not allowable under the grant, they found that

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- 1 hundreds of thousands of dollars of government money had been
- 2 spent on expenses that were either not in the budget or were
- 3 unrelated to the research that the grant was supposed to fund.
- 4 And you will also hear from three people who worked
- 5 for the defendant at CASI, his company. They will tell you
- 6 what it was like to work with the defendant, how he refused to
- 7 listen to their advice about what he could spend the grant
- 8 money on, how he changed the bookkeeping entries in the CASI
- 9 books and records to make sure that certain expenses were
- 10 classified as research-related expenses so that they could be
- 11 paid for with grant funds, and how he told them he thought he
- 12 could do what he pleased with the grant money.
- 13 Finally, you will be seeing a number of documents that
- 14 will show you the fraud in clear black and white. In
- 15 particular you will see an analysis of the defendant's personal
- 16 bank account and the bank accounts of CASI, and you will see
- 17 how virtually 100 percent of CASI's income was from the grant
- 18 funds and how those funds went to pay for all of the
- 19 nonallowable expenses that I mentioned before.
- 20 Now, before I sit down, ladies and gentlemen, I would
- 21 like you to do three things during the course of this trial:
- 22 First, pay close attention to what the witnesses have
- 23 to say, and pay close attention to the exhibits that are
- 24 introduced into evidence.
- Second, listen very carefully to Judge Patterson's SOUTHERN DISTRICT REPORTERS, P.C.

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- instructions on the law and follow them closely.
- Third, and most importantly, use your common sense,
- 3 the same common sense that you use every day to assess
- 4 situations and evaluate what people tell you. Your common
- 5 sense serves you very well in the outside world, and it will
- 6 also help you do justice in this case.
- 7 The government submits that if you do those three
- 8 things -- you pay close attention to the evidence, you listen
- 9 to the judge and you use your common sense -- you will make the
- 10 only finding that will be consistent with the evidence and the
- 11 law: That the defendant Daniel Karron is guilty as charged.
- 12 Thank you.
- THE COURT: Thank you, Mr. Everdell.
- Mr. Rubinstein?
- 15 MR. RUBINSTEIN: Yes, your Honor. Thank you, Judge
- 16 Patterson. Ladies and gentlemen of the jury, let me
- 17 reintroduce myself. My name is Ron Rubinstein. I represent
- 18 the defendant here Dr. D.B. Karron.
- 19 You may ask yourself why is Ron Rubinstein getting up
- 20 here to give an opening when Judge Patterson has told us on a
- 21 number of occasions that the defense doesn't have to prove
- 22 anything in a criminal case, and that as Dr. Karron sits over
- 23 there he is presumed to be innocent. And we call upon the
- 24 government to prove the allegations that they made in their
- opening remarks. We call upon them to prove beyond a

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- 1 reasonable doubt. But I'm going to tell you that they're not
- 2 going to even come close to beyond a reasonable doubt, because
- 3 you are going to find what Dr. Karron is and what he did, and
- 4 you are going to ask yourself at the end of the case why is
- 5 this person sitting here in the federal courthouse being
- 6 charged with this serious crime.
- 7 Dr. Karron received his Ph.D in 1992 from New York
- 8 University. He was a visiting scientist at New York University
- 9 after he graduated. He received a fellowship in cardiac
- 10 surgery at New York University, involved in cardiac imaging.
- 11 He received a grant -- not a grant -- a contract from a federal
- 12 agency. You are going to hear a lot of acronyms. The federal
- 13 people, everything is letters that they put together, and he
- 14 received a contract from a government agency called BABR, and
- 15 that was in 1999. Before that he taught at the city
- 16 universities. And when he received his contract, he formed a
- 17 corporation called CASI, Computer Aided Surgery, because that's
- 18 his specialty, using computers to aid people in surgery.
- 19 He had this company. He was an employee of this
- 20 company. Every penny he made he put into CASI, and CASI would
- 21 pay him a salary. What happened over time, after this BABR
- 22 contract ended -- and that was for a few hundred thousand
- 23 dollars over three years -- they extended it. They have
- 24 different phases, and they gave him a phase 1, and he produced,
- 25 then they gave him phase 2 and then phase 3. What happened is SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 that CASI the corporation had lean years, and Dr. Karron loaned
- 2 the corporation that he was a stockholder in monies over the
- 3 period of time.
- 4 So, lo and behold what happens is he gets this federal
- 5 grant. At the time he gets this federal grant from the
- 6 National Institute of Standards and Technology, under the
- 7 advanced technology program, CASI, his corporation that he is
- 8 an employee of, owes him in excess of \$100,000. Now, you are
- 9 going to find that he might be a very good scientist but he is
- 10 not the greatest manager in the world. So, he gets this money,
- 11 and he starts paying back the monies that were owed to him by
- 12 CASI corporation for the period of time prior to getting the
- 13 grant started. He got his first check on the grant in October
- 14 1, 2001, and in order to get this grant, he had to submit a
- 15 budget. He drew the budget. He submitted the budget. The
- 16 budget called for him in the first year to get \$800,000. The
- 17 budget called for him to get \$175,000 in salary. The budget
- called for fringe benefits of \$110,000 and other things.
- 19 And what happened is -- why did NIST give him this
- 20 money? NIST you are going to learn is a program that gives out
- 21 \$60 million a year in rewards, in grants. They are for
- 22 broad-based economic benefits. The concepts that the
- 23 scientists present to NIST, to apply and get these funds, is
- that the end result of your research, even if that's five, ten
- or 20 years later, will be commercialized in the marketplace

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- 1 and therefore benefit the United States by this research. As a
- 2 matter of fact, the way the program works is that even after
- 3 the three years and he develops a product, that 40 percent of
- 4 the time you are going to find that these companies that get
- 5 this grant money develop products that are great for this
- 6 country and great for man kind and 60 percent fail. But that's
- 7 OK. That's OK. The end product, whatever Dr. Karron develops,
- 8 he is entitled to keep. The government has no financial
- 9 interest in it. They are interested in scientists doing things
- 10 that are going to benefit man kind for the next hundred years.
- 11 That's the government program in this area.
- 12 So, one of the main things to get these grants -- and
- 13 two thirds of the grants are given to small companies, and Dr.
- 14 Karron's company was a very, very small company -- the grant
- 15 has to be the priority of your company. You have to be
- 16 devoting the majority of your time to this program. This is
- 17 innovative and high-risk technology we are talking about, and
- 18 the project here is of national medical importance, scientific
- 19 and technological merit of a digital morse theory based on --
- 20 digital morse is some mathematical theory that Dr. Karron works
- 21 with, and it is for imaging based on antilogical segmentation
- 22 registration, reverse engineering in modeling phenomenon for
- 23 images. The concept is in the end result that through the use
- 24 of computers it's going to better aid in diagnostic treatment
- and planning so that it will be easier for doctors to operate

- 1 and remove -- one of the illustrations is cancer tumors.
- 2 That's what this project is call about. I will try and say it
- 3 in a better way. To develop and demonstrate novel computer and
- 4 engineering technology based on the digital morse theory, to
- 5 enhance the quality and usability of computerized anatomic
- 6 models for precise and accurate cancer treatment therapies.
- 7 Just think about it, it makes like a map of an egg, where all
- 8 the white is in one place, the yellow is another place, the
- 9 yellow being the tumor in a 3D fashion, and this is the concept
- 10 that NIST through the ATP program gave Dr. Karron a grant for
- 11 \$2 million over three years.
- 12 Now, this is high tech. It's also high risk. And the
- 13 government gave Dr. Karron money to make mistakes, because
- 14 that's what science is. Science is experimenting. You make a
- 15 mistake, you try something else. And he, Dr. Karron, submits a
- 16 budget. They don't disapprove his budget. They're giving
- 17 him -- they, NIST, APD, are giving Mr. Karron's company
- 18 \$800,000. He submits a budget. He has equipment 300,000, he
- 19 has employees 300,000. He has fringe benefits. And those are
- 20 round numbers I'm using right now. But fringe benefits he has
- 21 \$110,000.
- 22 This budget is approved, and the prosecution here
- 23 wants to say that this budget, anything he spends different
- 24 than this budget is stealing. And I submit to you that this
- 25 budget is a living, breathing thing, that this budget is

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- 1 amendable at any time, because as you are going through science
- you find out that, gee, I don't need all of these employees, I
- don't have to spend \$100,000 on this fellow, I'm a teacher, I
- 4 will get interns for nothing, or \$100 a week, and they will
- 5 come and work, and I am going to spend my money on equipment.
- 6 Nobody is going to come and testify that Dr. Karron
- 7 didn't work six, seven days a week, probably 80 to 100 hours a
- 8 week on this project. He wasn't going to the Bahamas or Aruba
- 9 or anyplace else. He was living this project, and he expected
- 10 to get additional funding for this concept. He was in
- 11 negotiation with the State of New York. Tragically, as we all
- 12 remember, just prior to October 1, 2001 when this grant
- 13 started, this CASI grant started, 9/11 happened, and the state
- of New York cut back on their funding. They cut back on their
- 15 funding.
- 16 So, he gets the money. And, by the way, he is
- 17 entitled -- you are going to find out from these witnesses he
- is entitled to take expenses that happened before October 1.
- 19 He is allowed to get start-up pregrant money for he starts. He
- 20 is also allowed to contribute his own equipment, because the
- 21 grant calls for about a 5 percent cofunding. In other words,
- 22 the recipient has to come up with about five percent, which in
- this case is in the neighborhood of 35 or \$36,000.
- 24 And I stand here and I tell you that Dr. Karron is
- 25 guilty of making mistakes, he is guilty of not dotting every I

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- 1 and crossing every T, he is guilty of not following the
- 2 guidelines, and he is guilty of not having a manual in place.
- 3 But they are accusing him of intentionally misusing funds. He
- 4 didn't spend more than the money they gave him, and I submit to
- 5 you that technically he may have misused the funds by
- 6 redirecting monies allocated to personnel to equipment, but
- 7 this benefited the project. The concept I submit to you is
- 8 what is allowed and what is allowable, and I say to you
- 9 equipment, purchasing equipment at a number higher than what
- 10 you originally were budgeted for, that you used in this
- 11 project, is allowable, and the defendant believed that as long
- 12 as he gave reasonable use, that it was OK because you could
- 13 amend the budget.
- So, here is Dr. Karron. CASI is situated in his
- 15 apartment. His apartment becomes the equivalent of a computer
- 16 lab. Their agents -- I am taking it out of their agent's own
- 17 testimony, who came to that apartment, and you would not call
- 18 it an apartment. You would call it a computer lab where he
- 19 lives. And he made renovations, because he had -- remember,
- 20 you are going back to 2001. The computers aren't as small as
- 21 they are today; they generate a lot of heat; they need to be a
- 22 dust-free atmosphere. There is all kinds of renovations that
- 23 go in, and the purpose of those renovations are for the
- 24 science, for the equipment.
- The government is selective in what expenses he made SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 that they're complaining about. And when they say that he is
- 2 not allowed to spend money on rent, well, that's in the
- 3 ordinary course, that's in the rules, we concede that. But
- 4 they also, the grant administrators, could adjust the rules.
- 5 Because the concept of rent, as the government suggested in
- 6 their opening, is that most companies, they're doing different
- 7 things, so the rent, it's hard to attribute rent to one
- 8 specific thing if they are working on three or four projects.
- 9 Here CASI was working on one project. The electric utilities
- 10 went up double, we are going to show you, in the time that the
- 11 grant was in operation.
- 12 And what did Dr. Karron do? He did everything he
- 13 could in his power to make this project work. And he hired
- 14 accountants. He hired bookkeepers, he hired accountants, and
- 15 he hired an accountant who was paid, Ms. Hayes. She is the
- 16 star government witness, his accountant, his accountant who
- 17 improperly wore two hats because she also became the auditor
- 18 for the project, and she is supposed to be submitting the audit
- 19 budget, the audit, after the first year. Well, the first year
- 20 ended September 30, 2002. You know when Ms. Hayes got that
- 21 budget in? In June of 2003. She got some extensions.
- 22 So, in the end Ms. Hayes, who was paid by Dr. Karron,
- 23 was really not working for him, she was working for the
- government.
- And I submit to you you are going to find out that bad SOUTHERN DISTRICT REPORTERS, P.C.

- 1 audits are not criminal. There are specific legitimate
- 2 pathways outlined in the rules to resolve audit problems
- 3 without making it criminal, and a grant recipient who is
- 4 attempting to resolve a difference of opinion may have
- 5 different procedures. Dr. Karron says I'm entitled to these
- fringe benefits because all of my employees are entitled to
- 7 these fringe benefits.
- 8 They want to say he is not entitled. They talked
- 9 about medical. Yes, there were specific medical expenses, but
- 10 he has a right to negotiate these things civilly. And even if
- 11 they don't agree with him civilly, it doesn't mean that it was
- 12 criminal. Because the judge is going to tell you what the law
- is, and I am not going to trespass on his province, but you are
- 14 going to find that Dr. Karron never intended to commit a crime.
- 15 And what I'm going to show, what he did in his own convoluted
- 16 way is going to prove to you beyond a reasonable doubt that he
- 17 never intended to commit a crime.
- 18 He had four different color checks for each different
- 19 company that he had that was related to this. He then scanned
- 20 every single document, every single document he ever came in
- 21 touch with. He didn't hide anything. I call upon them to
- 22 prove. They said it, that he changed records. He scanned
- 23 every single document he had, and they were in the computer,
- 24 and he hid nothing, nothing. How do you steal when you keep
- 25 records? This is a ma and pa science operation store. It's a

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- 1 ma and pa store. This is not IBM. This is not Xerox,
- 2 Microsoft. This is a small company that self insures people
- 3 from the first dollar, and they say -- and this grant was
- 4 suspended. They didn't terminate the grant. They suspended
- 5 it. He believes that the grant is going to get restarted,
- 6 because everybody knows that he is making progress
- 7 scientifically on this grant. All their witnesses are going to
- 8 say that, that he is going ahead and doing things. So, when
- 9 they suspend the grant, they tell him that he is \$54,000 short
- 10 on cofunding, his money that should have been put in by June
- 11 27, 2003, a year and nine months after the grant is given,
- 12 cofunded. Dr. Karron says I did cofund, I gave the equipment,
- 13 I'm entitled to an offset for the equipment that CASI had from
- 14 the BARBR program that we donated to this project. But the
- 15 grant is suspended. And what does a person in business do? He
- 16 goes and takes a loan on the apartment, on a line of credit,
- 17 and he puts \$60,000 into CASI to pay bills and keep the project
- 18 going, \$60,000 of his own money that he borrowed from himself.
- 19 And it's not the only time he borrowed money from himself to
- 20 put in the CASI during this grant period. And of course the
- 21 grant people say you weren't supposed to do that, you were
- 22 supposed to give us the 60,000, so we are still keeping you
- 23 suspended even though you are spending this 60,000 on
- 24 grant-related items, even though you are paying back bills that
- 25 you incurred before the grant was suspended. He keeps going

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- with the project because he believes, hey, they've got to keep
- the budget going because I'm working hard and I'm doing
- 3 everything right here, and I have all the records, and let the
- 4 accountants decide what is right or wrong and tell me.
- 5 Ms. Hayes actually did his personal tax returns. I
- 6 mean they gave this money to Dr. Karron, a person who hadn't
- 7 paid his taxes in three years. That's the kind of manager he
- 8 is, but he is not a crook. He is not a crook. And they talk
- 9 about the fringe benefits, and I submit to you that one of the
- 10 main reasons they say that he took money that he wasn't
- 11 entitled to is that he didn't have a manual that said what the
- 12 fringe benefits are. Do you know who creates the manual? Dr.
- 13 Karron does. There is not even a review system to say we don't
- 14 like your manual, Dr. Karron, you can't be having dental bills
- and personal surgery and what have you. No, if we had it
- 16 written, it would be OK. So, because it wasn't written, he is
- 17 a crook.
- 18 (Continued on next page)

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- 1 MR. RUBINSTEIN: So that tells you how significant the
- 2 manual is. And I submit to you that there came a time that he
- 3 did start. They did prepare a manual. It was after the grant
- 4 was suspended, but they did prepare a manual. And all the
- 5 items, which the fringe benefits, they were budgeted for
- 6 110,000 a year, they spent less than \$110,000 a year. Most of
- 7 the employees that Dr. Karron had, who were full-time
- 8 employees, were college professors and people at academia who
- 9 had their own health insurance. So they didn't need the
- 10 benefit. But if someone needed the benefit, he gave child care
- 11 to a bookkeeper.
- 12 They talk about the rent. I submit to you that
- doesn't prove any criminality. Most of the rent that was paid
- 14 to Dr. Karron was rent that was due him prior to the grant.
- 15 They just didn't have the money so they didn't, they didn't pay
- 16 it.
- And also there's little question that he could've
- 18 gotten permission to have the rent, because it wasn't what they
- 19 call an indirect expense any more, because it was the only
- 20 expense for that project. And there was no attempt to hide
- 21 that these checks were written for rent. It's on the memo of
- 22 the checks. Does he intend to commit a crime if he does that?
- 23 Part of this \$500,000 they're talking about are on
- 24 salaries, salaries of other people that they disallowed. The
- 25 government order, disallowed. Why? He had a manager, an

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- 1 operations manager. First year submitting a budget, Gurfein's
- 2 making \$100,000. He fires Gurfein. He hires somebody for
- 3 30,000, but they never approved this person. They didn't
- 4 disapprove the person. The person has credentials. I think
- 5 he's going to be a government witness. Bob Benedict has
- 6 credentials that you're going to say, this is the kind of
- 7 person you would want involved in a grant like this from the
- 8 business standpoint, but we disallow it; therefore, you stole
- 9 it 'cause you gave it to Benedict to be your manager.
- 10 They disallowed these salaries retroactively.
- 11 They talk about the loan, \$75,000 loan. As I said, he
- 12 had accountants. This was put on the books as a loan.
- 13 \$75,000. What happened? That was in November, October or
- 14 November of 2001.
- 15 Before the year was out, in August of 2002, they made
- 16 accounting adjustments where they charged him and made the loan
- 17 and the income. So it became part of his salary. The
- 18 accountants said, this is your salary. He took it as salary.
- 19 And you're going to find that during the course of this grant
- in the first year he wasn't taking money. He didn't take his
- 21 first paycheck -- started October 1st, until May, I think it's
- 22 May 11th, 2002. And the accountants had to beg him to take
- 23 more paychecks because he wanted to make sure that there was
- 24 money in the till.
- You're going to find out from the bookkeepers, he SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 would ask, how much money do we have in the bank. And he
- didn't bounce any checks. When he got an accounting service,
- 3 bookkeeping service, outside payroll service, all kinds of
- 4 checks started to bounce. He made sure that the taxes were
- 5 paid. That's what he understood, taxes have to be paid. And
- 6 I'm going to prove to you people that he shouldn't have paid
- 7 any taxes, because he had what's called a net operating loss in
- 8 CASI that he could write off when he made a profit. So now he
- 9 was going to make a profit. What happened? The lawyers and
- 10 the accountants that he has with him, they decide to change the
- 11 company from CASI, Inc., Incorporated, to a CASI LLC. Well,
- 12 unfortunately, technically, technically when you do that, it's
- 13 a new entity. So because it's a new entity, he loses the
- 14 benefit of the carryover loss. So now he has to pay income tax
- on the 175,000 that he probably wouldn't have to pay a dime if
- 16 they knew what they were doing.
- But they're not criminals either. So just because you
- 18 make mistakes, does not make you a criminal. And you're going
- 19 to find at the end of this case, when I come back to you after
- 20 the government presents all its witnesses, and we present our
- 21 witnesses, you're going to say to yourself -- you might not
- 22 even have to leave the jury box to say that this man is not
- 23 guilty. Just keep an open mind, and I thank you very much for
- 24 your time.
- 25 THE COURT: All right. Your first witness.

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(212) 805-0300

862ZKAR3 Opening - Mr. Rubinstein

- 1 Government's first witness?
- 2 MR. KWOK: Government calls Betti Joyce Lide. With
- 3 your Honor's permission, we would like to hand out jury
- 4 binders.
- 5 THE COURT: These are exhibits that will be admitted
- 6 in evidence, you believe?
- 7 MR. KWOK: That's correct, your Honor.
- 8 THE COURT: Members of the jury, the government has
- 9 prepared individual jury folders which contain exhibits they
- 10 expect to have admitted in evidence. I would allow them to
- 11 distribute the individual books to each of you, but you're not
- 12 to look at any of the exhibits until they've been admitted in
- 13 evidence. So when the time comes that I admit something in
- 14 evidence, then you are entitled to look at that exhibit and
- 15 only that exhibit until it's admitted, till the other exhibits
- 16 are admitted in evidence.
- 17 So with that instruction, I'll allow the books to be
- 18 distributed to the jury and they'll be kept at your -- they'll
- 19 be ready for you in the morning so you can check your book.
- I don't want to take up the time in the morning.
- 21 While they're distributing the book, I should give you
- 22 some instructions about the trial day while we're waiting for
- 23 this witness. I'd like to begin at 9:30 in the morning and run
- until 1:00 o'clock with a single break sometime between 11:00
- and 11:30, 10 minutes. Then come back at 2:00 after lunch and

862ZKAR3 Opening - Mr. Rubinstein

- 1 run from 2:00 till 4:00 without a break. That way you had
- 2 chance to get home before the evening rush. If a juror -- if a
- 3 witness is in the middle of something or has to get -- has
- 4 travel plans or something of that sort and is near the end of
- 5 the testimony, I may let them go a little longer so they're
- 6 through for the day and don't have to spend an extra day in a
- 7 city that they're not resident in.
- 8 But those are the general rules. Now, at the end of
- 9 every day you'll see people come into the courtroom. They're
- 10 here on other cases. I have other cases that go on after 4:00
- 11 o'clock period. Don't let them -- don't let them interfere
- 12 with your attention to the witnesses.
- 13 I believe that the government has those books.
- 14 They'll also probably use the screen up here, isolated passages
- 15 from the documents that are admitted in evidence to highlight
- 16 them for you.
- 17 All right. Will you swear in the witness, please.
- 18 THE DEPUTY CLERK: Please stand and raise your right
- 19 hand.
- 20 BETTI JOYCE LIDE,
- 21 called as a witness by the government,
- 22 having been duly sworn, testified as follows:
- 23 DIRECT EXAMINATION
- 24 BY MR. KWOK:
- 25 THE COURT: All right, please proceed, Mr. Kwok.

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862ZKAR3 Lide - direct

- 1 MR. KWOK: Thank you, your Honor.
- 2 Q. Good afternoon, Ms. Lide.
- 3 A. Hi.
- 4 Q. How are you employed?
- 5 A. I am with the National Institute of Standards and
- 6 Technology, part of the U.S. Department of Commerce.
- 7 Q. What is your position now in that?
- 8 A. I am now a physical scientist in the information technology
- 9 laboratory.
- 10 Q. What was your position before then?
- 11 A. I was with the advanced technology program serving as
- 12 program manager and the competitions manager.
- 13 Q. What is the advance technology program?
- 14 A. The advanced technology program is a funding agency, a
- 15 funding part of the National Institute of Standards and
- 16 Technology which helps U.S. industry perform research that is
- too high risk for the industry to perform alone.
- 18 Q. You mentioned you were a competitions manager; what do you
- 19 do in that capacity?
- 20 A. As competitions manager, I oversaw the receipt of all of
- 21 the proposals to that program, and the evaluation of those
- 22 proposals leading to which ones would receive funding.
- 23 Q. Program manager, what did you do in that capacity?
- 24 A. As a program manager, I oversaw the technical
- 25 commercialization progress of each of the projects that I

862ZKAR3 Lide - direct

- 1 managed.
- 2 THE COURT: What year are we talking about?
- 3 THE WITNESS: We -- I started with the advanced
- 4 technology program when it began in 1990, and I left it in
- 5 2005.
- 6 Q. Ms. Lide, who are the typical recipients of this advanced
- 7 technology program or ATP grant?
- 8 A. The recipients are U.S. industries, and they can partner or
- 9 subcontract to universities and non-profits.
- 10 Q. How competitive is the selection process?
- 11 A. It is a very competitive process.
- 12 Q. Can you give us a sense of how competitive it is?
- 13 A. Certainly. Most competitions see only about one in ten
- 14 proposals being given an award.
- 15 Q. And what is the amount of the grant awarded to each
- 16 successful applicant?
- 17 A. A single applicant can receive a total of \$2 million, and
- 18 that could be spread over anywhere from one to three years.
- 19 Q. And where does that money come from?
- 20 A. The money comes from the funds that the U.S. Congress gives
- 21 to the National Institute of Standards and Technology.
- 22 Q. How does that money get into the hands of the successful
- 23 applicant?
- 24 A. When the applicant is successful, that money is put into a
- fund, basically, like a bank account, against which that

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- 1 applicant can draw.
- Q. Now what, if anything, does the grant --
- 3 THE COURT: In whose is name is the bank account?
- 4 THE WITNESS: I'm sorry?
- 5 THE COURT: In whose name is the bank account?
- 6 THE WITNESS: The bank account is in the name of the
- 7 for profit company. Thank you.
- 8 THE COURT: The for profit company.
- 9 THE WITNESS: Correct. The money must flow to a
- 10 company that is for profit. It cannot flow, for example, to a
- 11 university.
- 12 Q. And what, if anything, does the grant recipient have to
- 13 contribute to the costs of the research?
- 14 A. A single applicant must pay all of the indirect costs and
- 15 can contribute to the direct costs.
- 16 O. What are these direct versus indirect costs?
- 17 A. Direct costs are those funds that go directly to the
- 18 research, such as individual salaries or equipment needed to
- 19 perform that research.
- 20 Q. How about indirect costs?
- 21 A. Indirect costs are things that would be spread over all of
- the activities of that company, such as facilities, rent,
- 23 electricity, legal fees, secretarial support, administrative
- 24 support, looking for other funding, that sort of thing.
- Q. So if a grant has the cost shared requirement, where does SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 the cost recipient pay the costs share amount to?
- 2 A. The recipient must pay his or her part of that cost share
- directly to the expenses of the project. So if a big piece of
- 4 equipment was bought -- was purchased, the government would pay
- 5 its percentage and the recipient would pay its percentage.
- 6 Q. And what is the typical percentage of what the cost share
- 7 is?
- 8 A. In addition to the indirect costs, there is no typical
- 9 costs, but whatever percentage is put in the original proposal
- 10 must be adhered to for the life of the project.
- 11 Q. Now, what, if anything, governs how grantees can spend
- award money that they get?
- 13 A. There are many documents outlining how awardees can spend
- 14 the money beginning with a kit it that the proposer gets when
- 15 he --
- 16 MR. RUBINSTEIN: Objection, your Honor. This is
- 17 hearsay.
- 18 THE COURT: Do we have the documents that --
- 19 MR. KWOK: Yes, I do.
- 20 THE COURT: Objection sustained. But this is
- 21 introductory, and the jury is instructed that they will be
- 22 guided by the documents themselves that deal with this
- 23 particular grant. This is more of a -- whatever you've been
- 24 hearing is not directly relevant to this grant.
- 25 BY MR. KWOK:

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1 Q. Let me just ask a general introductory question, if I may.

- 2 What is the general rule that governs how grantees can spend
- 3 their money?
- 4 A. They can spend money on the direct costs of the research.
- 5 Q. You mentioned earlier there's a budget. What obligations
- do they have under the budget?
- 7 A. They must adhere to the budget under which they applied.
- 8 Q. Are there circumstances under which they can deviate from
- 9 that budget?
- 10 A. Yes. There are certain circumstances. 10 percent of the
- 11 annual amount that they are going to spend can be moved within
- 12 existing categories.
- 13 THE COURT: Is there any documentation to support
- 14 this?
- 15 MR. KWOK: Yes, I can introduce them now.
- 16 THE COURT: Otherwise, I don't think that's admissible
- 17 testimony.
- 18 MR. KWOK: Okay. May I approach?
- 19 THE COURT: Yes.
- 20 Q. Miss Lide, I'm handing you what's on top marked for
- 21 identification government Exhibit 1. And if you could also
- 22 look at actually government exhibits two, three and four as
- 23 well. Do you recognize these documents?
- 24 A. Yes, I do.
- 25 Q. How are you able to recognize them?

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1 A. I helped prepare them, I used them, and they were given to

- 2 me as project manager.
- 3 Q. Were all of these documents prepared by someone with
- 4 knowledge of or made from information transmitted by persons
- 5 with knowledge of the information appearing on them?
- 6 A. Yes.
- 7 Q. And were these documents made at or near the time the
- 8 information contained in them became available?
- 9 A. Yes.
- 10 Q. Is it the regular practice of NIST or the ATP program to
- 11 prepare such documents?
- 12 A. Yes.
- 13 Q. And are these documents kept in the course of a regularly
- 14 conducted business activity?
- 15 A. Yes.
- MR. KWOK: Government offers Exhibit one, two, three
- 17 and four.
- 18 THE COURT: Any objection, Mr. Rubinstein?
- 19 MR. RUBINSTEIN: Yes, your Honor. These are
- 20 multi-page documents that they just have a couple of pages on.
- MR. KWOK: No. Can we approach, your Honor?
- 22 THE COURT: Let's take -- let's let the jury go, and
- 23 we'll deal with it because that will take time. It's after
- 4:00 o'clock. So I'll excuse the jury. Why don't you go to
- 25 the jury room with Mr. Monteagudo so he can give you the proper SOUTHERN DISTRICT REPORTERS, P.C.

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1 instructions about how to get back here for 9:30 in the

- 2 morning. So the jury is excused until 9:30 in the morning.
- 3 (Jury exits the courtroom)
- 4 THE COURT: Watch your step.
- 5 (In open court; jury not present)
- 6 THE COURT: You want the witness to step out or --
- 7 MR. RUBINSTEIN: I don't have a problem because she
- 8 might be able to help us.
- 9 THE COURT: What?
- 10 MR. RUBINSTEIN: She might be helpful, Judge. My
- 11 concern is that it was my understanding these documents are
- 12 multi pages, and I'm taking a look at what the government has
- 13 given me, and it seems like they've extracted certain portions.
- MR. KWOK: No, I think that's a misunderstanding. I
- 15 think Mr. Rubinstein's associate received the full set of the
- 16 government exhibits. What we handed out to the jury just now,
- 17 the jury binders only contain the set that we intend to publish
- 18 to them. So they do have a full set of the documents in their
- 19 entirety.
- 20 THE COURT: What is this? This first document is
- 21 called -- it's titled Advanced Technology program proposal
- 22 preparation kit.
- 23 MR. KWOK: That's correct, your Honor.
- THE COURT: Is that complete?
- 25 MR. RUBINSTEIN: No, it's not complete, your Honor.

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- 1 It misrepresents what the document is.
- THE COURT: That's what I'm asking.
- 3 MR. KWOK: No, the jury binders contain -- the jury
- 4 binders contain selected pages that we intends to publish on
- 5 the screen so they can follow along, but the exhibits that
- 6 would actually be introduced into evidence, that copy is the
- 7 complete copy. And we have also produced full sets of all the
- 8 documents that the government intends to introduce.
- 9 THE COURT: This is this document that you've just
- 10 handed me, which you said is not complete.
- MR. KWOK: No, that is --
- 12 THE WITNESS: That is complete, sir.
- MR. KWOK: That is a complete copy.
- 14 THE COURT: This is complete.
- MR. KWOK: Exactly.
- 16 THE COURT: What you handed the jury is only selected
- 17 parts of that?
- 18 MR. KWOK: Only parts that we intend to put on the
- 19 screen and publish to them while they can follow along, that's
- 20 correct.
- 21 THE COURT: So, but government Exhibit 1 will be this
- 22 folder.
- MR. KWOK: That's correct, your Honor.
- 24 THE COURT: This part will only contain those portions
- of the folder, of the folder you believe are relevant to their

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- 1 consideration.
- 2 MR. KWOK: That's correct.
- 3 MR. RUBINSTEIN: Judge, I object to that. And I think
- 4 they could just as easily -- they want to publish certain pages
- 5 to the jury, I think that's fine. But I think it is misleading
- 6 to have in a binder two pieces of -- two pages of something
- 7 that is -- has significantly more pages. And I, that -- so I
- 8 don't have a problem if they give that document to the jury and
- 9 say we're referring to page so and so. But they're going to
- 10 offer one in evidence, I assume, not, not the extracted version
- 11 that they have in their binders.
- 12 THE COURT: Well, extracted is no different in pages,
- as I understand it. It's -- they've merely got those sections
- 14 that they feel are relevant to -- for the jury's consideration
- 15 to demonstrate that there's certain, I suppose, agreements that
- 16 were made between the grantor and the grantee. But, so I'm
- inclined to let them in evidence, but with instruction to the
- 18 jury that Exhibit 1, what they have is merely excerpts, what
- 19 they have in their books is merely an excerpt of government
- 20 exhibit one, if we're dealing with government Exhibit 1. I
- 21 presume there's a government Exhibit 2, and that is --
- 22 THE WITNESS: Would you like --
- 23 THE COURT: Government Exhibit 2 doesn't seem to have
- 24 the folder. What is it?
- 25 THE WITNESS: It is the general terms and conditions

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- 1 that, that the program used for all awardees.
- 2 THE COURT: And who receives a copy of this?
- 3 THE WITNESS: It's always available and it's with the
- 4 award document when it's given to the company.
- 5 THE COURT: What's the government Exhibit 3?
- 6 THE WITNESS: It's the financial assistance standards
- 7 terms and conditions. Here, again, it's always available.
- 8 It's on the website, but it's a part of each award that is
- 9 given to each recipient.
- 10 THE COURT: It's delivered to each grantee?
- 11 THE WITNESS: Yes, sir. Yes, sir. It's part of the
- 12 award document.
- 13 THE COURT: What's government exhibit 4?
- 14 THE WITNESS: Those are power point presentations that
- 15 we provide at what we call a kick off meeting. We meet with
- 16 each awardee right after the project starts. And exhibit 4 are
- the slides that we used which go over once again rules,
- 18 regulations, reporting requirements, et cetera.
- 19 THE COURT: That are presented at that meeting?
- THE WITNESS: Yes, sir.
- 21 THE COURT: Seems to me, as long as there's an
- 22 adequate and a clear statement made as regards each of these
- 23 matters that they -- each of the matters introduced in evidence
- 24 and their relationship to the marked document and their
- 25 exhibit, that it's admissible.

862ZKAR3 Lide - direct

1 MR. RUBINSTEIN: Your Honor, I have no objection to

- 2 the exhibit. I have an objection to what the government is
- 3 giving to the jury. Because I submit that it's misleading to
- 4 the jury because a picture's worth a thousand words. If
- 5 they're going to take and they take these binders into the jury
- 6 room, when they go to deliberate they're going to see two
- 7 pages, and I submit that that's not the evidence. The evidence
- 8 is the entire --
- 9 THE COURT: All right.
- 10 MR. RUBINSTEIN: -- the entire exhibit.
- 11 THE COURT: That may be a good point in terms of what
- 12 goes into the jury room with them. But why aren't they allowed
- 13 to -- why isn't it fair for them to look at it, excerpts that
- 14 the government feels are required from each of the exhibits?
- 15 Actually the others are not excerpts. The others are -- the
- 16 other materials are not excerpts. It's only this first
- 17 exhibit, exhibit one.
- 18 MR. RUBINSTEIN: Judge, it's misleading. Somebody
- 19 looking at this thing would think that some -- someone picking
- 20 up this exhibit, we turn to this page, with this information is
- 21 posted and where -- if a reasonable person -- as a matter of
- 22 fact, it starts at page six.
- THE COURT: I have it.
- 24 MR. RUBINSTEIN: I mean that's the first page is page
- 25 six.

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- 1 THE COURT: Well, I got -- that's not what I have. I
- 2 have the forward comes first.
- 3 MR. RUBINSTEIN: No, on Exhibit 1, your Honor.
- 4 MR. KWOK: I think your Honor has the full set of the
- 5 binders. With what the jury --
- 6 THE COURT: I don't have the binders. Are the binders
- 7 different than my -- the binders are different than what I
- 8 have? All right.
- 9 (Handing to the court)
- 10 THE COURT: I guess you better get -- I guess I didn't
- 11 get one of those. My government exhibits, I see where you're
- 12 saying, Mr. Rubinstein.
- 13 Well, what about that, Mr. Kwok? This doesn't seem --
- MR. KWOK: No, your Honor.
- THE COURT: How would you --
- 16 MR. KWOK: The reason we did it that way is because of
- 17 the bulkiness of some of the documents.
- 18 THE COURT: That isn't the issue, though. The issue
- is whether there can be jury confusion.
- 20 MR. KWOK: No, because I believe when the jury returns
- 21 to the jury room, what is introduced into evidence will be, if
- 22 they request it or if the Court agrees, will be the documents
- 23 that they bring back to the jury room.
- 24 We have no problem with keeping the binders just here
- in court so they can follow along while the paralegal shows the

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1 pages on the screen and they can look down, without having to

- flip through 100 pages of this book, 99 of which we do not
- 3 intend to show.
- 4 Similarly, for the bank records we did it for, to
- 5 conserve -- to, frankly, make it readable, instead of flipping
- 6 through 3,000 pages of bank records.
- 7 THE COURT: Well --
- 8 MR. KWOK: They can --
- 9 THE COURT: Then my instruction to the jury, as I
- 10 understand it, the reason for the Government's proceeding in
- 11 this way, Mr. Rubinstein, is that because the screen is the
- 12 other side of the courtroom, and sometimes it's hard to read
- 13 from the projector to the screen, that they're providing the --
- 14 wants to provide the jury with those pages that will be
- 15 projected on the screen. And if that's the case, then if I
- 16 instruct them that they are only to look at those exhibits when
- 17 they're projected on the screen; in other words, look at the
- 18 page of the exhibit that is in their books, which is being
- 19 projected on the screen, and that's all they're to look at,
- that seems to me to be fair.
- 21 MR. RUBINSTEIN: I suggest, your Honor, if that's --
- 22 THE COURT: They would not go into the jury room and
- 23 need only be used because of the distance between the size of
- 24 this courtroom and the question about eyesight of people being
- 25 able to see it, whereas they can read right along and check it,

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1 check the words if they are having difficulty reading what's up

- 2 on the screen.
- 3 MR. RUBINSTEIN: Well, why do they need the screen?
- 4 Why do they need the screen if they're giving, if they --
- 5 THE COURT: Well, some jurors would see it on the
- 6 screen and some jurors wouldn't.
- 7 MR. RUBINSTEIN: Judge, I think it just as easy if
- 8 they give them the whole document, as they apparently gave your
- 9 Honor and they said turn to page six, and they publish page six
- 10 on the screen. I mean, I don't see why -- people who are used
- 11 to handling documents, they see it in their mind a two page
- 12 item, and it's a ten page or 20 page item, there is a huge
- 13 difference. All right. And I think the jury has -- that it's
- 14 misleading to the jury to present it in this fashion. They
- 15 have the binder marked as government exhibits. They're not
- 16 government exhibits. They're extracts of government exhibits,
- 17 and they --
- 18 THE COURT: Well, maybe they should be marked
- 19 extracts.
- 20 MR. KWOK: We're happy to do that instead of saying
- 21 exhibits, we can put that word extract on top of every single
- 22 page. But the reason why we have the screen is so that they
- 23 can see which page we're talking about, and look at the
- 24 appropriate page in their binders.
- 25 THE COURT: Be sure they have the right page.

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1 MR. KWOK: Exactly. And that's exactly right, your

- 2 Honor.
- 3 And with respect to Mr. Rubinstein, it's the
- 4 government's case and within reason I think we are allowed to
- 5 try the case the way we think that it would be most make sense
- 6 to the jury.
- 7 THE COURT: All I'm trying to do is be sure that what
- 8 you do is fair and that it's not -- I don't give a wrong
- 9 instruction to the jury, which I already have because I thought
- 10 they were the exhibits, and I'll clarify that in the morning.
- 11 I'll make it clear that they're extracts, and you better have
- 12 some mark that it's an extract. And I'll make the clear that
- 13 they're entitled to full exhibits in their deliberations, and
- 14 the jury binders won't go back with them. I think that seems
- 15 to me to be fair.
- 16 I don't see how that hurts you, Mr. Rubinstein. We'll
- 17 have to make those changes.
- 18 All right, is there anything else to take up?
- MR. RUBINSTEIN: No, your Honor.
- 20 THE COURT: At least we cleared up one thing, we don't
- 21 have to do it tomorrow. It pays to go till 4:00 o'clock.
- 22 Okay.
- 23 MR. RUBINSTEIN: You went past 4:00, Judge.
- 24 THE COURT: What?
- 25 MR. RUBINSTEIN: We're on overtime.

862ZKAR3 Lide - direct THE COURT: Well, I know, but the jury -- it always pays to get these things cleared up. At least we cleared it up and wouldn't have a delay in the proceedings tomorrow. All right, I have to go to other business, unless you all need me for something. MR. KWOK: Thank you, your Honor. Nothing further from the government. MR. EVERDELL: Thank you. (Adjourned to June 3, 2008 at 9:30 a.m.)

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SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

8637KAR1 1 UNITED STATES DISTRICT COURT 1 SOUTHERN DISTRICT OF NEW YORK 2 2 3 UNITED STATES OF AMERICA, New York, N.Y. 3 S2 07 CR 541 (RPP) 4 v. 4 5 DANIEL B. KARRON, 5 6 Defendant. 6 7 ----X 7 8 June 3, 2008 9 9:20 a.m. 9 10 10 Before: 11 11 HON. ROBERT P. PATTERSON, JR., 12 12 District Judge

14 APPEARANCES

13

13

14

15	MICHA	AEL J. GARCIA
15		United States Attorney for the
16		Southern District of New York
16	BY:	STEVEN KWOK
17		CHRISTIAN EVERDELL
17		Assistant United States Attorneys
18		
18	RUBI	NSTEIN & COROZZO, LLP
19		Attorneys for Defendant
19	BY:	RONALD RUBINSTEIN
20		
20	Also	Present: Rachel Ondrik, U.S. Dept. of Commerce
21		Kirk Yamatani, U.S. Dept. of Commerce
22		
23		
24		
25		
		SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 (Trial resumed; jury not present)
- 2 THE COURT: All right. Thank you for being on time
- 3 this morning. Let's make a practice of getting here at least
- 4 at 9:15 so that we don't hold the jury up if they're here at
- 5 9:30. Is there anything to take up this morning?
- 6 MR. KWOK: Yes, your Honor. There are just three
- 7 issues about which I want to briefly address the court. First,
- 8 I submitted a letter last night. I don't think we necessarily
- 9 need to take that up now.
- 10 THE COURT: We haven't got it. I haven't got it.
- 11 MR. KWOK: I have an extra copy, actually my only
- 12 copy. Do you want me to hand it up?
- 13 THE COURT: Well, I better read it.
- I have read the government's letter. Is there any
- 15 comment?
- 16 MR. RUBINSTEIN: Yes, Judge. They are trying to
- 17 backdoor the fact that they don't have records. They brought a
- 18 case based upon records and inappropriate spending, and they
- 19 can't back it up with any evidence that is admissible in court,
- 20 so now they want to get in other testimony to suggest what
- 21 records they are talking about. They don't specify a
- 22 particular document, and they don't have any documents, from
- 23 what I understand, from this submission to support it, so I
- think that it's inappropriate.
- THE COURT: Well, I don't know what the situation is SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 with respect to the documents. This letter really only deals
- with the statements and actions of the defendant.
- 3 MR. RUBINSTEIN: Well, his statements are admissions
- 4 that he made if they're relevant. Their alleged observations
- of him, that's what they're looking to --
- 6 THE COURT: Actions are admissible.
- 7 MR. RUBINSTEIN: Yes, as long as they don't talk about
- 8 the document. I mean there is no document that I know of that
- 9 they're referring to, so we don't really know. Actually I
- 10 think it should be kept out on the probative value on 403, your
- 11 Honor, because it is so confusing to the jury. Unfortunately
- 12 it won't be confusing to the jury, it will be misleading to the
- 13 jury for these witnesses to talk about unknown documents that
- 14 we don't know if there were proper changes that he was making,
- 15 improper changes. This is all speculation on their part. Can
- 16 they identify what specific document they are talking about?
- 17 THE COURT: Well, aren't they going to have entries
- 18 that they are talking about?
- 19 MR. RUBINSTEIN: That's the problem, I don't believe
- 20 they do. If they do, let the government tell you.
- 21 THE COURT: It may not be a document, but it may be
- 22 entries.
- 23 MR. RUBINSTEIN: That's fine. That's fine. Let them
- 24 address and let us know what entries they are talking about.
- THE COURT: Well, I don't think they have to tell you SOUTHERN DISTRICT REPORTERS, P.C.

- 1 what entries in advance that they are talking about, but the
- 2 testimony will have to relate to entries and showing
- 3 expenditures of some sort in order to prove that they were
- 4 improper expenditures. There has to be a document someplace, I
- 5 don't mean that it isn't on computer as opposed to a ledger,
- 6 but if that's the way the defense kept its books.
- 7 Mr. Kwok? Are you not going to offer any evidence
- 8 from computer records or --
- 9 MR. KWOK: Actually, to give your Honor background to
- 10 why this issue even arose, we do have a snapshot of this Quick
- 11 Books ledger that we have been talking about, but it's just
- 12 that, a snapshot.
- 13 THE COURT: What do you mean by a snapshot?
- 14 MR. KWOK: It is what the ledger looks like at a
- 15 particular point in time, just like if you were working on a
- 16 document, you save it, you print it out, that's what we have,
- 17 what we believe to be the final or close to final version that
- 18 one of the auditors looked at.
- 19 THE COURT: But don't you have anything to prove
- 20 expenditures?
- 21 MR. KWOK: On that ledger it shows a number of
- 22 expenses that were paid for using grant money that should not
- 23 have. But what we are really talking about --
- 24 THE COURT: Aren't you going to go beyond that at some
- 25 point in the trial and show that X, Y and Z supplier received

- 1 payment of that?
- 2 MR. KWOK: Yes, your Honor. And the primary way we
- 3 are going to prove that is not actually through the ledgers, as
- 4 I've told Mr. Rubinstein numerous times. The way we are trying
- 5 to prove that is through the bank records, through independent
- 6 records that we got from third parties. So there can be no
- 7 dispute that there is some confusion about the books and it's
- 8 unclear what's going on, we are looking outside the company, to
- 9 look at vendors, to look at credit card statements, to look at
- 10 bank records. That's how we're going to establish that funds
- 11 were misapplied.
- 12 Now, I have been trying to work with Mr. Rubinstein to
- 13 get what he considers the accurate set of ledgers. We haven't
- 14 been able to come to any agreement, because he considers my
- 15 ledger that I provided to him to be incomplete or inaccurate or
- 16 could possibly be tampered with.
- 17 So, now that we are unlikely to come to an agreement
- 18 on what that ledger is going to look like, I submitted the
- 19 letter to this court because I believe that our witnesses can
- 20 testify just like any percipient witness can as to what they
- 21 observed. Simply because the topic of their testimony relates
- 22 to a document doesn't make their testimony hearsay.
- THE COURT: That's right.
- Mr. Rubinstein?
- 25 MR. RUBINSTEIN: Your Honor, I think you have to lay a SOUTHERN DISTRICT REPORTERS, P.C.

- 1 foundation. Let's assume that what the witness is referring to
- 2 is an expense for lunch at a restaurant and this is what the
- 3 witness put in or suggests is a non-NIST expense. Right? If
- 4 they identify this expense, then I intend on cross-examination
- 5 to show them the backup to show that it was a NIST expense.
- THE COURT: That it was a?
- 7 MR. RUBINSTEIN: That it was an appropriate expense.
- 8 Just because they say it wasn't appropriate, let's see the
- 9 expense. And then you will know whether he is changing
- 10 something because he is trying to cook the books.
- 11 THE COURT: Well, which way is the government to
- 12 proceed? Is it going to start with the snapshots of the
- 13 ledger, or is it going to start with the expenditures that were
- 14 made and then elicit the testimony about the ledger?
- 15 MR. KWOK: I think it's the latter. We are going to
- 16 introduce the government auditor very soon who is going to talk
- 17 about the bank records, basically the records I referred to
- 18 outside of the company, to show that funds were misapplied.
- 19 Then we are going to have another set of witnesses who
- 20 worked with the defendant in his company, who are going to tell
- 21 us that when they worked with him they would make certain
- 22 bookkeeping entries only to have them changed back time and
- 23 again into a grant expense when they have told him repeatedly
- 24 to stop doing that. We are not going to elicit any --
- 25 THE COURT: But aren't you going to elicit the

- 1 expenditures first that you contend were improper?
- 2 MR. KWOK: Not precisely, your Honor. I don't intend
- 3 to elicit --
- 4 THE COURT: It's going to be hard for the jury to
- 5 understand the relevance of the testimony unless you do it that
- 6 way.
- 7 MR. KWOK: Well, we will talk about some of the
- 8 background as to what their understanding about the rules were
- 9 and the conversations they had on that subject with the
- 10 defendant, and then it will become relevant or it will be
- 11 become obvious why it's relevant that the defendant then went
- 12 against their repeated warnings to go back into the books to
- 13 change them. That's all we are trying to elicit.
- 14 THE COURT: You say that's all you're trying to
- 15 elicit. You're going to elicit the expenditures, are you not?
- 16 I mean the jury is going to have a hard time. Not all of these
- 17 jurors have a law degree or what have you. If they don't know
- 18 what the expenditures are, how are they going to be able to
- 19 evaluate the testimony about changing the books, etc.?
- MR. KWOK: Well, I mean they are going to talk about
- 21 some examples as to the type of things that got changed, so
- 22 they are going to talk about some of the examples where you
- 23 make bookkeeping entries that the defendant then changed, and
- 24 then they are going to talk about, for example --
- THE COURT: Well, those examples are going to have to SOUTHERN DISTRICT REPORTERS, P.C.

- 1 relate to expenditures --
- 2 MR. KWOK: They will.
- 3 THE COURT: -- which were actually made.
- 4 MR. KWOK: They will. By that point in time when they
- 5 will testify, a record will already I believe have been made by
- 6 the government auditor that those were the types of things that
- 7 grant funds were misspent on, such as utilities, meals and so
- 8 forth, and they are going to relate back to those topics with
- 9 questions and answers.
- 10 THE COURT: You say the types of things. Don't they
- 11 have to be the exact things?
- 12 MR. KWOK: I don't believe they do, because the way we
- 13 establish that those exact things were misspent using grant
- 14 money is through our government auditor.
- 15 The other witnesses are going to show not so much that
- 16 those monies were in fact spent -- because we will have already
- 17 established that -- but to show the defendant's criminal intent
- in making those types of expenses, that he knew that he wasn't
- 19 supposed to spend money that way, and because he tried to hide
- it, that's how we're trying to establish criminal intent. We
- 21 don't have to establish line by line.
- 22 THE COURT: I know how you're trying to establish
- 23 criminal intent, but what I'm concerned about is whether it's
- 24 possible under the rules of evidence to present to the jury in
- 25 a manner in which they can understand the significance of the

- 1 testimony of these inside employees at the time that this was
- 2 presented to them. It's just a matter of sequence.
- 3 MR. KWOK: I understand that, and it will be the
- 4 government's burden at summation to tie all the loose ends
- 5 together.
- 6 THE COURT: Well, I understand the summation, but
- 7 there is some benefit sometimes to having the jury not be
- 8 completely surprised in summation as to the way everything fits
- 9 together.
- 10 MR. KWOK: I understand, and I appreciate your Honor's
- 11 point, but we will do our best. I think when the testimony
- 12 comes out, it will be clear why we are eliciting that type of
- 13 testimony.
- 14 THE COURT: Well, I'm not going to interfere with your
- 15 manner of presentation. That's your manner of presentation.
- 16 But I am going to make rulings on evidence as the questions are
- 17 asked, and whether there is a foundation. Foundation, I have
- 18 found that for some reason attorneys in the U.S. attorney's
- 19 office don't always recognize the significance of, and I often
- 20 have to sustain for lack of proper foundation, and then you
- 21 have a problem. It's an objection that apparently has fallen
- 22 out of favor in some courtrooms, but it's one which is
- 23 perfectly valid.
- MR. KWOK: Certainly, your Honor.
- 25 THE COURT: And that's what Mr. Rubinstein is

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- 1 basically saying, that the way you are approaching it, you need
- 2 to establish the proper foundation with testimony.
- 3 MR. KWOK: We will certainly try to establish the
- 4 proper foundation, but I want to make the argument that to the
- 5 extent --
- 6 THE COURT: Foundation shows relevance, and that's why
- 7 I have proceeded the other way myself. But you do whatever you
- 8 want. I want this case to go forward promptly and efficiently,
- 9 and you deal with the expenditures first and then you have a
- 10 foundation for those questions. When you don't, I don't know
- 11 how you're going to establish the foundation. You may be able
- 12 to.
- MR. KWOK: Thank you, your Honor.
- 14 If I may just raise one quick other point. With
- 15 respect to the first witness, before we paused yesterday I
- 16 believe defense counsel objected on hearsay grounds. I just
- want to make clear the scope of your Honor's ruling.
- 18 I might have neglected to ask a witness certain
- 19 foundational questions about whether she was personally
- 20 familiar with the rules and regulations of the program. If I
- 21 have asked that, I don't believe I'm bound by simply
- 22 introducing documents and have her read from those documents,
- 23 if she is going to explain the rules of the program that she
- 24 personally knows about.
- 25 THE COURT: Well, the better thing to do is to lay the SOUTHERN DISTRICT REPORTERS, P.C.

1	foundation	by	having	the	rules	of	the	program	offered	in

- 2 evidence, and then she can testify about them.
- 3 MR. KWOK: Very well, your Honor.
- 4 MR. RUBINSTEIN: Your Honor, we left actually with the
- 5 issue of what the binders contain, and that your Honor was
- 6 going to give an instruction to the jury.
- 7 THE COURT: I'm going to give them the instruction.
- 8 MR. RUBINSTEIN: Could I step out for a personal
- 9 matter, your Honor?
- 10 THE COURT: Sure. Maybe we all ought to. The jury --
- 11 apparently there is a hold-up on one of the subway lines. Six
- jurors were not here at 9:30.
- 13 (Recess)
- 14 THE COURT: Counsel, Juror 8 is missing, Mr. Naveen.
- 15 I think we have to go ahead without him if he isn't here by 10
- 16 o'clock. I have about two minutes to ten. Or Naveen John I
- 17 guess his name is.
- DEPUTY COURT CLERK: He's here.
- 19 THE COURT: OK.
- 20 (Continued on next page)

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1	(Jury present)
2	THE COURT: Please be seated. Good morning, ladies
3	and gentlemen. I'm sorry. I understand the subway, one of the
4	subway lines had a problem this morning. If it would do any
5	good, I would speak to the mayor about it, but I recognize it
6	wasn't your fault, but let's please be on time. I get the
7	lawyers here 15 minutes early so we can take up any matters
8	that need to be taken up before you get into the jury box.
9	Yesterday, I gave you some instruction, and I will
10	have to revise those instructions because I did not fully
11	comprehend how the government was going to proceed here.
12	The books you have in front of you contain excerpts of
13	the exhibits that they intend to offer at the time of trial,
14	and the excerpts are what they are going to show on the board
15	up here. However, for your convenience, because some people
16	may have difficulty in reading what's up on the screen, there
17	is an extra copy in the books. So, if you don't have any
18	difficulty reading what's up on the board, you don't have to
19	use the books. If on the other hand you find it difficult
20	reading what's up on the board because of the distance, then
21	you have freedom to look at the books and with respect to that
22	particular exhibit. So, don't look at other exhibits or
23	excerpts of exhibits unless they have been admitted into
24	evidence already.
25	All right. With that instruction, I think we're ready

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- 1 to go ahead.
- 2 MR. KWOK: Thank you, your Honor.
- 3 BETTI JOYCE LIDE, resumed.
- 4 THE COURT: Ms. Lide, you are reminded are you still
- 5 under oath, and the jury is instructed that any time a witness
- 6 takes the stand on a succeeding the day, the court as a matter
- 7 of court procedure must remind them that they are still under
- 8 oath. You are not to draw any inference from the fact that the
- 9 court reminded them they are still under oath. All right.
- 10 MR. KWOK: Thank you, your Honor.
- 11 Before we broke yesterday, the government offered
- 12 Government's Exhibits 1, 2, 3 and 4.
- 13 THE COURT: Let's identify what Government Exhibit 1
- 14 is.
- 15 MR. KWOK: Government Exhibit 1 is a proposal
- 16 preparation kit. Exhibit 2 marked for identification is --
- 17 THE COURT: Wait a minute. It's the proposal
- 18 preparation kit for the Advanced Technology Program.
- MR. KWOK: That's correct, your Honor.
- 20 THE COURT: That's Exhibit 1. That's admitted in
- 21 evidence, the full exhibit.
- 22 (Government's Exhibit 1 received in evidence)
- MR. RUBINSTEIN: Without objection.
- 24 THE COURT: Without objection.
- MR. KWOK: And Government Exhibit 2 is the general SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 terms and conditions, Advanced Technology Program.
- 2 THE COURT: All right. That is admitted in evidence
- 3 without objection.
- 4 (Government's Exhibit 2 received in evidence)
- 5 MR. RUBINSTEIN: That's correct.
- 6 MR. KWOK: Government Exhibit 3 is Department of
- 7 Commerce, financial assistance, standard terms and conditions.
- 8 THE COURT: That's admitted in evidence without
- 9 objection.
- 10 (Government's Exhibit 3 received in evidence)
- 11 MR. KWOK: Government Exhibit 4 is a slide
- 12 presentation. The first page is grants and agreements,
- 13 management division.
- 14 THE COURT: Of the Advanced Technology Program.
- MR. KWOK: That's correct.
- 16 THE COURT: Exhibit 4 is admitted without objection.
- 17 (Government's Exhibit 4 received in evidence)
- 18 THE COURT: Go right ahead.
- 19 DIRECT EXAMINATION (Continued)
- 20 BY MR. KWOK:
- 21 Q. Ms. Lide, are you personally familiar with the rules and
- 22 regulations of the Advanced Technology Program?
- 23 A. Yes, I am.
- Q. How is it that you are familiar with the rules and
- 25 regulations of that program?

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Lide - direct

- 1 A. I helped develop some of the rules and regulations, and I
- 2 have followed them in all of the projects that I manage.
- 3 Q. What are a grantee's obligation under that program with
- 4 respect to their budget?
- 5 A. Their obligation is that they adhere to the budget and all
- of the rules and regulations in these documents.
- 7 Q. Are there circumstances under which they can deviate from
- 8 the budget?
- 9 A. Yes, there are. For any given budget year, for the amount
- 10 of money allocated to that year, they can move up to 10 percent
- 11 from one category to another as long as those categories exist
- in the budget.
- 13 Q. What if they want to move money that exceeds the 10 percent
- 14 annual budget amount?
- 15 A. They must ask for permission and get written prior approval
- 16 before the new budget is authorized.
- 17 Q. What if they want to add a new category altogether?
- 18 A. They must ask for permission and get written prior approval
- 19 before they add that category.
- 20 Q. Ms. Lide, are oral approvals ever given?
- 21 A. No.
- 22 Q. Are there situations where grantees can spend the money
- 23 first and seek approval after the fact?
- 24 A. It is the exception to the rule. That happens
- occasionally, but when that happens, any of the money spent SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 before the written approval is given is at the grantee's risk.
- Q. Now, are there certain principles that dictate whether ATP
- 3 will pay for certain expenses or not?
- 4 A. Yes, there are, and those are all in these documents.
- 5 Q. What are some of those basic rules?
- 6 A. Basically ATP will not pay indirect costs for single
- 7 applicants, such as rent, facility renovations, legal fees,
- 8 administrative costs for secretaries and that sort of thing,
- 9 which is spread over the whole company's activities.
- 10 Q. And do you pay for expenses incurred before the start of
- 11 the grant program?
- 12 A. No, we call them sunk costs, and nothing incurred before
- 13 the actual start date of the project can be charged to the U.S.
- 14 government.
- 15 Q. How do grantees know about all of these rules that you just
- 16 described to us?
- 17 A. They know about these rules in these documents that are
- 18 exhibits 1 through 4 through conferences that we give, through
- 19 telephone advice that we always have available, and through a
- 20 kick-off meeting which is what is presented in Exhibit 4.
- Q. What is a kick-off meeting?
- 22 A. A kick-off meeting is a meeting between the grantee and the
- 23 project management team at NIST where we go through all of the
- 24 rules and regulations, ask if there are any questions, and make
- 25 sure that the grantee understands the responsibilities of being

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- 1 good stewards of the government's money.
- Q. When does this kick-off meeting typically happen?
- 3 A. Shortly after the start of the project, as soon as
- 4 possible, depending on circumstances. And before it occurs, we
- 5 are always available by telephone.
- 6 Q. How do you know that that's what happened at these
- 7 meetings?
- 8 A. I was there, I was part of the project management team, and
- 9 I participated in these meetings.
- 10 Q. Now, let's take a look at the exhibits I have introduced
- 11 into evidence just a moment ago one at a time. Let's take a
- 12 look at Government Exhibit 1.
- 13 Your Honor, may we publish that to the jury?
- 14 THE COURT: The excerpts?
- MR. KWOK: Yes, to page 6.
- 16 THE COURT: All right. Government Exhibit 1 can be
- 17 published to the jury on the screen, and if you have difficulty
- in reading that -- and I can understand why you would -- I
- 19 think you better take out your books and look at the excerpts.
- 20 Can it be blown up anymore, counsel? The paralegal
- 21 can't blow that up more?
- 22 MR. KWOK: I think we need the bottom part of the
- 23 page. I'm just directing Ms. Moussa to the bottom part of the
- 24 page.
- THE COURT: The whole thing can't be blown up so they SOUTHERN DISTRICT REPORTERS, P.C.

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1 can read the whole thing on the board? You are using less than

- 2 half of the screen. You're still using less than one half of
- 3 the screen. You better get someone there who knows how to use
- 4 it.
- 5 Can't you do the whole thing?
- 6 MR. EVERDELL: Your Honor, I think this is as big as
- 7 it gets on the screen. I think this is as big as it gets on
- 8 the screen.
- 9 THE COURT: Why not show the whole page?
- 10 MR. EVERDELL: I think when you show the whole page,
- 11 it shrinks on the page. We can't show it any bigger than that.
- 12 THE COURT: You can do more.
- 13 MR. EVERDELL: I don't think so. That is why we have
- the jury binders as well.
- 15 THE COURT: You need the jury binders. I have fair
- 16 eyesight, but the jury -- can all the jury read that, or does
- 17 everyone have my problem? I can't read it.
- 18 All right. I see some shaking their head saying they
- 19 can't read it. All right.
- 20 MR. EVERDELL: I believe Mr. Kwok was asking for a
- 21 specific part of the document, which can be blown up.
- 22 THE COURT: Sometimes we have smaller boxes for the
- 23 jury to watch. Are we going to have much more of these
- 24 documents in this case?
- MR. EVERDELL: Yes, your Honor, we will.

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- THE COURT: Why don't we call the people downstairs,
- 2 Joel, and he can set up individual screens -- not individual,
- 3 but one for every three or four jurors.
- 4 MR. EVERDELL: We can try that, your Honor, but we
- 5 also have the jury binders there so they can look at the paper
- 6 copy if they can't see the copy on the screen. The documents
- 7 are in the binders.
- 8 THE COURT: But the other difficulty is that usually
- 9 when you show these things on the board you have a laser or
- 10 something like that to point to the exact language that you are
- 11 trying to isolate. But, all right, all right. Proceed.
- MR. KWOK: Thank you, your Honor.
- 13 BY MR. KWOK:
- 14 Q. Ms. Lide, directing your attention to page 6, paragraph 5,
- can you just describe to us what that says?
- 16 A. Yes. That is describing some of the costs that are
- 17 unallowable under the Advanced Technology Program.
- 18 Q. What are some of those examples?
- 19 A. Some of them are the construction of new buildings or
- 20 renovations of existing laboratories, indirect costs, as we
- 21 have already discussed, profit management fees, interest,
- facilities capital cost, if money, and that goes on to page 7
- if you want more examples.
- Q. What are those?
- 25 A. Such as bid and proposal costs -- which are examples of SOUTHERN DISTRICT REPORTERS, P.C.

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sunk costs which we discussed -- tuition, surveys,

- 2 commercialization studies and the like.
- 3 O. I am showing you the next page. It's marked as --
- 4 THE COURT: Page 7?
- 5 THE WITNESS: 7, sorry.
- 6 MR. KWOK: Ms. Moussa, can we have the next page up?
- 7 THE COURT: Page 7 is up.
- 8 MR. KWOK: The next page in the jury binder.
- 9 THE COURT: Page 7 is the next page, I believe after
- 10 page 6.
- 11 MR. KWOK: I am referring to the next page in the jury
- 12 binder, your Honor. It's the instructions for form NIST 1262,
- 13 item K.
- 14 THE COURT: Sorry. I'm unable to follow you.
- 15 Page 6, and then there is page 7. You use the term
- 16 page 6, I presume you mean page 7 when you say the next page.
- 17 This does not seem to have a numbered page.
- 18 MR. KWOK: It does not have a numbered page, but it is
- 19 the next page in the jury binders.
- 20 MR. RUBINSTEIN: The extract, your Honor.
- 21 THE COURT: After 7?
- 22 MR. RUBINSTEIN: It's not the next page in Exhibit 1,
- 23 your Honor. It's the next page in what has been given to the
- jury, the extracts of Exhibit 1.
- 25 MR. KWOK: If we could zoom in to item K.

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1 THE COURT: These are the instructions for form NIST.

- 2 MR. KWOK: 1262.
- 3 THE COURT: I see. All right.
- 4 Q. Miss Lide, can you tell us what that says.
- 5 A. Yes. Item K says that all of the indirect costs must be
- 6 absorbed by the proposer.
- 7 Q. And once again, what are indirect costs?
- 8 A. Indirect costs are those that you cannot clearly identify
- 9 with only this ATP project but rather are incurred by all of
- 10 the activities of that company.
- 11 Q. And when do you typically hand out this booklet that we are
- 12 just looking at?
- 13 A. This booklet is available the minute we announce a
- 14 competition. It is sent to thousands of people on our mailing
- 15 list. We hold conferences and we give it out there, and it is
- 16 electronically available on our website.
- 17 Q. Let's go to the next Government Exhibit, Government Exhibit
- 18 2.
- 19 THE COURT: Just so I understand, everything in
- 20 Exhibit 1 is sent to a proposed grantee, is that correct?
- 21 THE WITNESS: That is correct, sir, yes.
- 22 O. Miss Lide, what is Government Exhibit 2?
- 23 A. This is the general terms and conditions of the Advanced
- 24 Technology Program.
- 25 Q. And when is this document given out?

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- 1 A. Once again it's available on the web. It's available by
- 2 anyone who requests it. It's discussed at the proposer's
- 3 conference, and it is part of the award that is made when the
- 4 company receives an award.
- 5 Q. Directing your attention to page 3 of that document --
- 6 THE COURT: When the company gets the award?
- 7 THE WITNESS: When the company gets the award, when
- 8 they get the document that says you are now a recipient, this
- 9 goes along with that.
- 10 THE COURT: Thank you.
- 11 Q. Zooming in on paragraph 9, up to the end of A.
- 12 Directing your attention to that paragraph --
- 13 MR. RUBINSTEIN: Excuse me. What page are you on?
- MR. KWOK: Page 3 of Government Exhibit 2.
- MR. RUBINSTEIN: Thank you.
- 16 Q. What does that paragraph say?
- 17 A. This paragraph is repeating what we said earlier, that we
- 18 need prior written approval for any change in the budget over
- 19 10 percent of the annual amount.
- 20 Q. And what does it say your obligations are if you create new
- 21 budget categories in the budget?
- 22 A. One must also get prior written approval to create a new
- 23 category.
- Q. Let's go to section 12 of the same page titled equipment.
- 25 It also goes on to the next page, on page 4 of Government

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- 1 Exhibit 2. Can you just summarize for us what that paragraph
- 2 says?
- 3 MR. RUBINSTEIN: Judge, I'm going to object to the
- 4 summarizing. This is in evidence, and I submit that
- 5 summarizing is not adequate.
- 6 THE COURT: Well, could you read what that paragraph
- 7 says, Ms. Lide.
- 8 THE WITNESS: Certainly. "Upon expiration of the
- 9 project period, the recipient shall submit to the NIST grants
- 10 officer an inventory of equipment acquired with federal funds,
- 11 as prescribed in 15 CFR 14.34, along with an equipment
- 12 disposition certification."
- 13 Q. It goes on to the next page.
- 14 A. Right. "Consistent with the requirements of the government
- 15 performance" --
- 16 Q. Sorry, that's not the next page.
- 17 A. No. Continuing then, "The certification provides the
- 18 recipient an opportunity to request authorization to continue
- 19 to utilize the equipment for the purposes of the
- 20 commercialization initiative. If approved by the NIST grants
- 21 officer, the recipient shall report to NIST every two years the
- 22 condition of the equipment as long as the current market value
- 23 is more than \$5,000."
- Q. What does that mean in plain English?
- 25 A. It basically means that the equipment is property of the SOUTHERN DISTRICT REPORTERS, P.C.

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1 U.S. government, and if approval is given in writing, the

- 2 recipient can continue to use it for the purposes of that
- 3 project as long as they continue to report every two years that
- 4 it's worth over \$5,000.
- 5 Q. What happens to the equipment if it falls below market
- 6 value of \$5,000?
- 7 A. It belongs to the company.
- 8 Q. That means they can keep it.
- 9 A. Right.
- 10 Q. Let's turn to the next exhibit, Government Exhibit 3.
- 11 THE COURT: Government Exhibit 3 is?
- 12 MR. KWOK: Department of Commerce, financial
- assistance standard, terms and conditions.
- Q. Ms. Lide, what is that document?
- 15 A. It is a Department of Commerce document with rules and
- 16 regulations for financial assistance, and again it is given to
- 17 every award that is made.
- 18 Q. Directing your attention to page 2, paragraph 4A and B, can
- 19 you explain to the jury what that means?
- 20 MR. RUBINSTEIN: I object again, your Honor to
- 21 explaining something where it hasn't been addressed first.
- 22 MR. KWOK: Your Honor, it's in evidence. The witness
- 23 has testified that she has personal knowledge of these rules
- 24 and regulations, and she regularly conducts these meetings as
- 25 part of her job and responsibility.

8637KAR1 Lide - direct

- 1 THE COURT: Well, give the jury a chance to read the
- 2 document first. Then I will allow her to explain what it
- 3 means. But first the jury is instructed to read the document.
- 4 MR. KWOK: Thank you, your Honor.
- 5 May I proceed, your Honor?
- 6 THE COURT: All right.
- 7 Q. Now, Ms. Lide, now tell us what that means.
- 8 A. Part A is the instruction on how to suggest a change one
- 9 wants to make, and that is put in writing to the program
- 10 officer, the change in budget one wants. The program officer
- 11 reviews it and sends a recommendation to the grants office.
- 12 The second part, part B, is repeating that this must be done
- 13 for any percentage over 10 percent.
- 14 Q. Now, aside from handing out these documents that we just
- 15 looked at, what else do you do to make sure that grant
- 16 recipients understand the terms and conditions of the grant?
- 17 A. Once again, we do go over them at any proposer's
- 18 conference, which is an open meeting for anybody who wants to
- 19 apply, and we are very clear at that. But again once the grant
- is made, these documents become part of the award package, and
- 21 we have this kick-off meeting I referred to, and we go over
- these rules and regulations yet again.
- 23 Q. Let's now turn to Government Exhibit 4. What is that
- 24 document?
- 25 A. This is the Power Point presentation that was used for the SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR1 Lide - direct

- 1 kick-off meeting.
- 2 Q. Which particular program grant did you use this particular
- 3 slide show presentation?
- 4 A. The grant to Computer Aided Surgery, Incorporated, CASI.
- 5 Q. Directing your attention to pages 6 and 7 of that slide
- 6 presentation. Let's go to page 6 first. I will pause so
- 7 people can read it.
- 8 Ms. Lide, what are you trying to convey by this slide?
- 9 A. That in the course of this project all of the rules and
- 10 regulations listed here must be adhered to.
- 11 Q. Go to the next page.
- 12 THE COURT: Can you go back? So the special award
- 13 conditions are what?
- 14 THE WITNESS: They are part of the award document.
- 15 When the award is made, there can be special award conditions
- 16 such as you must hire someone with this expertise, or you must
- 17 have a business plan in 90 days, that sort of thing. They are
- 18 unique to each particular award.
- 19 THE COURT: And the ATP general terms and conditions
- 20 are what exhibit?
- 21 THE WITNESS: That was Exhibit 2.
- 22 THE COURT: And the Department of Commerce standard
- 23 terms and conditions, are they --
- THE WITNESS: That was Exhibit 3.
- THE COURT: And then what is 15 Code of Federal

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- 1 Regulations (CFR) part 14? Is that relevant here?
- 2 MR. KWOK: It may be at some point, your Honor, but
- 3 not right now.
- 4 THE COURT: And then the cost principles found in the
- 5 federal acquisition regulation part 31, is that --
- 6 MR. KWOK: Again, it's not relevant directly at this
- 7 point. I will ask the witness to explain the last item, ATP
- 8 audit guidelines.
- 9 Q. Ms. Lide, what is that?
- 10 A. Each project must undergo audits at specific intervals, and
- 11 for a three-year single company there is an audit after year
- 12 one and an audit after the project ends, and these are the
- 13 quidelines for the auditor to follow to make sure that the
- 14 project has followed the above federal rules and regulations.
- 15 THE COURT: Are those included in this Exhibit 4, the
- 16 audit guidelines, or does someone get them at the time of the
- 17 award?
- 18 MR. KWOK: It is part of Government Exhibit 4, the
- 19 whole set.
- 20 THE COURT: Part of Government Exhibit 4.
- 21 MR. RUBINSTEIN: What is that? I missed that, your
- Honor.
- 23 THE COURT: I asked about the ATP audit guidelines,
- 24 and I don't want Mr. Kwok to testify, I want Ms. Lide to
- 25 testify. You are not a witness, Mr. Kwok.

8637KAR1 Lide - direct

- 1 MR. KWOK: I understand.
- 2 THE WITNESS: These audit guidelines are available on
- 3 the website. They're given to each project, and we also have
- 4 a --
- 5 THE COURT: I understand on the website, but forget
- 6 the website for a second. They go to them.
- 7 Are they given to them at the time of the meeting?
- 8 THE WITNESS: No. I'm not sure if they are part of
- 9 the original award package. I would have to look that up.
- 10 THE COURT: Are they part of the ATP recipient
- 11 regulations package, responsibilities?
- 12 THE WITNESS: I would have to look up the cover page
- of our award. I am not sure of that, sir.
- MR. KWOK: We will come back to that.
- 15 THE COURT: I want to know whether it's clear at the
- 16 outset that they have to adhere to the audit guidelines.
- 17 MR. KWOK: Your Honor, I think we will go in sequence.
- 18 Right now I just want to establish the terms and conditions
- 19 that they have to abide by.
- THE COURT: Well, that's one of the terms and
- 21 conditions. It says right up above. That's why I'm asking
- 22 about it.
- 23 THE WITNESS: Yes, sir, they are part of the original
- 24 award package.
- Q. And where are you looking, Ms. Lide?

SOUTHERN DISTRICT REPORTERS, P.C.

	8637KAR1 Lide - direct
1	A. I am looking at the cover page of the award that's given to
2	the recipient.
3	Q. Let's go to the next page of this slide show presentation.
4	What message are you trying to convey by that slide?
5	A. The slide is trying to convey the message that any change
6	of any significance to the research project must receive prior
7	written approval before it can be in effect.
8	(Continued on next page)
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SOUTHERN DISTRICT REPORTERS, P.C.

863ZKAR2 Lide - direct

1 Q. Now, Ms. Lide, are you familiar with the term, fringe

- 2 benefits?
- 3 A. Yes.
- 4 O. What does that term mean?
- 5 A. That term encompasses such things that we would normally
- 6 know as an employee getting --
- 7 MR. RUBINSTEIN: I object to that, your Honor.
- 8 THE COURT: I'm sorry?
- 9 MR. RUBINSTEIN: Is she an expert? She's --
- 10 THE COURT: She's the manager of the grants.
- 11 MR. KWOK: Let me lay some foundation, your Honor.
- 12 THE COURT: All right.
- 13 BY MR. KWOK:
- 14 Q. Ms. Lide, do you deal with rules and regulations dealing
- 15 how fringe benefits can be paid for using grant money as part
- of your are day -- duty as a grant specialist?
- 17 A. As part of the project management team, I am tasked with
- 18 advising companies on what can and cannot be included in fringe
- 19 benefits.
- 20 Q. And so what does that term, as you understand it to mean?
- 21 A. It means things beyond the employee's salary, such as
- 22 health insurance and vacation time.
- THE COURT: What can or cannot be.
- 24 THE WITNESS: It depends on what written policy the
- 25 company has, so.

863ZKAR2 Lide - direct

1 Q. What are some of the basic rules governing whether fringe

- 2 benefits --
- 3 A. Well --
- 4 Q. -- can be paid for using ATP grant money?
- 5 MR. RUBINSTEIN: I object, your Honor, unless they
- 6 could point to some rules.
- 7 THE COURT: That's what we're asking, I think that's
- 8 what he's asking for.
- 9 Q. Ms. Lide, could you -- are there rules and regulations in
- 10 the ATP program governing whether grant money can be spent
- 11 using on fringe benefits, yes or no?
- 12 A. Yes there are. A company --
- 13 Q. What are those rules?
- 14 A. A company must --
- 15 MR. RUBINSTEIN: I object to hearsay. If there are
- 16 rules, what exhibit are they in?
- 17 MR. KWOK: Your Honor, the witness has just testified
- 18 that she has personal knowledge about these rules and
- 19 regulations governing fringe benefits.
- 20 THE COURT: I sustain the objection.
- Where are the rules and regulations, Ms. Lide?
- 22 THE WITNESS: In the federal acquisition and
- assistance terms and conditions.
- 24 THE COURT: And they're exhibit what?
- 25 THE WITNESS: Three.

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863ZKAR2 Lide - direct

- 1 THE COURT: Three?
- THE WITNESS: Yes, sir.
- 3 THE COURT: Okay.
- 4 Q. So can you now tell us what those rules are?
- 5 MR. RUBINSTEIN: Judge, I'm going to object. Can we
- 6 go to Exhibit 3?
- 7 MR. KWOK: Exhibit 3 is in evidence.
- 8 MR. RUBINSTEIN: What page?
- 9 THE COURT: It's not, it's not in this excerpts, is
- it? Is it in the excerpts, Mr. Kwok?
- 11 MR. KWOK: I do not believe so.
- 12 THE COURT: You'll have to refer to the actual
- 13 exhibit, Ms. Lide.
- 14 THE WITNESS: I'm sorry, I don't think it's in this
- one. I think it's in that CFR numbered one. It's not in
- 16 Exhibit 3. It's in CFR --
- 17 Q. Let's turn to government Exhibit 4.
- 18 THE COURT: Which one?
- 19 MR. KWOK: Government Exhibit 4, page six.
- 20 THE COURT: Is that in the extracts or is it not?
- 21 MR. KWOK: It is in the extract. It's the bullet
- 22 point five.
- 23 Q. Ms. Lide --
- 24 THE COURT: I'm sorry.
- MR. RUBINSTEIN: Excuse me.

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863ZKAR2 Lide - direct

1 THE COURT: Give me a chance to check this.

- MR. RUBINSTEIN: My pages aren't numbered.
- 3 (Pause)
- THE COURT: She says it's in the CFR, Mr. Kwok.
- 5 THE WITNESS: Yes. It's in item one, two, three, four
- 6 and five on that chart.
- 7 MR. RUBINSTEIN: If Mr. Kwok would --
- 8 THE COURT: What about -- where in those items is it?
- 9 BY MR. KWOK:
- 10 Q. Well, Ms. Lide, do you --
- 11 THE COURT: I'm sorry, I'm asking the question, Mr.
- 12 Kwok. I want it answered, all right.
- 13 THE WITNESS: I'm --
- 14 THE COURT: From the witness.
- 15 THE WITNESS: Yes, sir. I am the technical person on
- 16 this project, and I believe my colleague, who will be here
- 17 later, will be able to point to the exact part of that. She's
- 18 from our grants office and she knows those documents part by
- 19 part. So if you would allow me to defer to her, I believe I
- 20 would appreciate that.
- 21 THE COURT: Then I don't want to hear any testimony
- 22 about the regulations on benefit plans, at this time.
- MR. KWOK: That's fine. We'll move on.
- 24 Q. Ms. Lide, did there come a time when you became involved in
- 25 a grant involving Dr. Daniel B. Karron?

863ZKAR2 Lide - direct

- 1 A. Yes.
- Q. Do you see Dr. Karron in the courtroom here today?
- 3 A. Yes.
- 4 Q. Could you point him out and describe an article of clothing
- 5 he's wearing?
- 6 A. He's at the second table with the dark suit and glasses
- 7 and, let's see, long -- longer hair.
- 8 MR. KWOK: Your Honor --
- 9 MR. RUBINSTEIN: Judge, that's not fair.
- 10 A. Okay, behind a blue box.
- 11 THE COURT: All right.
- 12 MR. KWOK: Your Honor, may the record reflect that the
- witness has identified the defendant?
- 14 THE COURT: The record will so indicate.
- Q. Ms. Lide, how did you first meet the defendant?
- 16 A. I met the defendant at a kickoff meeting for a project that
- was awarded to his company by the Advanced Technology Program.
- 18 Q. And what was the name of this company?
- 19 A. CASI, Computer Aided Surgery Incorporated.
- 20 Q. And, approximately, when did this meeting take place?
- 21 A. Early November of 2001.
- 22 Q. Where did this meeting take place?
- 23 A. At the National Institute of Standards and Technology.
- Q. And where is that?
- 25 A. In Gaithersburg, Maryland.

863ZKAR2 Lide - direct

1 Q. Who attended this meeting on behalf of CASI?

- 2 A. Dr. Karron, Mr. Lee Gurfein, and Dr. Rick Satava.
- 3 Q. Now, what was your understanding as to the defendant's role
- 4 in Computer Aided Surgery, Inc.?
- 5 THE COURT: How do you spell that last name?
- 6 THE WITNESS: S-a-t-a-v-a.
- 7 THE COURT: Thank you.
- 8 THE WITNESS: Certainly.
- 9 A. The defendant's position in the company was both chief
- 10 technical officer and president.
- 11 Q. And you mentioned Lee Gurfein. Who is Lee Gurfein?
- 12 A. Lee Gurfein was participating as a business contact.
- 13 Q. How about Rick Satava, who was he?
- 14 A. Rick Satava was a clinical and technical consultant.
- 15 Q. And who attended the meeting on behalf of the ATP program,
- on behalf of NIST?
- 17 A. Myself and two colleagues, Miss Jane Orthwein and Miss hope
- 18 Snowden.
- 19 Q. And who was Hope Snowden?
- 20 A. Hope Snowden represented the NIST grants office and was the
- 21 grants specialist for this award.
- 22 O. How about Jane Orthwein?
- 23 A. Jane Orthwein was my partner in managing this from a
- 24 technical perspective. She was also part of the Advanced
- 25 Technology Program.

863ZKAR2 Lide - direct

- 1 Q. What happened at this meeting?
- 2 A. As in -- we used Exhibit 4 that presentation, the slide
- 3 show. And as in all of our kickoff meetings, we allow the
- 4 recipient of the award time to give us any updates on the award
- 5 that happened since it was awarded. And then we go over those
- 6 slides asking if there are any questions on reporting
- 7 requirements, rules and regulations and other government
- 8 response.
- 9 Q. What if, any rules, about the program did you focus on in
- 10 your presentation?
- 11 A. Well, as you saw in the presentation, we focus on making it
- 12 very clear that the proposal is --
- MR. RUBINSTEIN: Objection, your Honor.
- 14 THE COURT: Objection sustained. It's a conclusory
- 15 statement.
- 16 What was said at the meeting with regard to the rules
- 17 and regulations, not -- don't characterize it. Just say what
- 18 was said.
- 19 A. We reiterated the need to adhere to government rules and
- 20 regulations.
- Q. And what are those rules that you mentioned?
- 22 A. The rules that we mentioned are part of the award document,
- 23 some of them in the exhibits, the need for prior approval among
- 24 them.
- 25 O. And --

863ZKAR2 Lide - direct

- 1 THE COURT: Prior approval.
- THE WITNESS: For any major change.
- 3 THE COURT: Over 10 percent.
- 4 THE WITNESS: Over 10 percent of the budget or in key
- 5 personnel, and anything that would affect the technical aspect
- 6 of the project.
- 7 Q. What, if anything, did you discuss about direct versus
- 8 indirect costs?
- 9 THE COURT: About what, sir?
- 10 Q. Direct versus indirect costs?
- 11 A. We went over the fact that direct costs are paid by the
- 12 U.S. government, and any cost share that the proposer, proposed
- indirect costs must be paid for by the proposer.
- 14 Q. What, if anything, was discussed about how grantee would
- 15 find out whether a request for more occasion, the budget would
- 16 be granted or denied?
- 17 A. The only way the request can be submitted to, whether it
- 18 was denied or approved is submitted in writing to the grant
- 19 recipient, from the grants officer at NIST.
- 20 THE COURT: What would be given -- the approval in
- 21 writing would be given to?
- 22 A. That is correct, the approval in writing is given to the
- 23 awards recipient in the form of an amendment to the award. The
- 24 original award is an award document, and then the first
- approved change is amendment one, et cetera. And that's an

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- official document signed by the grants officer at NIST.
- THE COURT: That would be Miss Snowden?
- 3 THE WITNESS: No. Actually it's Miss Snowden's boss
- 4 at the time, it was Miss Marilyn Goldstein.
- 5 Q. At the time the project was approved at CASI, did you have
- 6 an understanding as to where Dr. Karron would be carrying out
- 7 his research?
- 8 A. It was our understanding that office space was being looked
- 9 for in lower Manhattan, and that there was a possibility of
- 10 office space or lab space at CUNY or at the New York Medical
- 11 Center.
- 12 Q. And how did you learn this?
- 13 A. It was in the original proposal and it was discussed.
- 14 Q. Ms. Lide, I'm showing you what has been marked for
- 15 identification government exhibit exhibits 10, 10A, 10B, 11,
- 16 12, 13 and 14. Can you take a moment to look at these?
- 17 THE COURT: These are not in evidence yet.
- 18 MR. KWOK: No they're not. It's just for
- 19 identification.
- 20 THE COURT: The jury shouldn't look at them until such
- 21 time as they've been admitted in evidence. Just hold on. All
- 22 right. So we start with one document at a time Mr. Kwok.
- THE WITNESS: Okay.
- 24 MR. KWOK: Sure, let's look at government exhibit 10.
- THE COURT: Do you know what that is, Ms. Lide?

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- 1 THE WITNESS: Yes, I do.
- THE COURT: And what is it?
- 3 THE WITNESS: It is the first part of the proposal
- 4 submitted to the Advanced Technology by CASI.
- 5 MR. KWOK: Government offers government exhibit 10?
- 6 THE COURT: No objection?
- 7 MR. RUBINSTEIN: No objection, your Honor.
- 8 THE COURT: Government's exhibit 10 is admitted into
- 9 evidence.
- 10 (Government's Exhibit 10 received in evidence)
- 11 Q. Government exhibit 10A.
- 12 THE COURT: The jury can look at 10 then.
- 13 All right. 10A.? Ms. Lide, do you know what that is.
- 14 THE WITNESS: Yes, I do. It is a --
- MR. RUBINSTEIN: Your Honor, excuse me.
- 16 THE COURT: I'm sorry.
- 17 MR. RUBINSTEIN: 10 is a number of pages, your Honor.
- 18 It's not just one page.
- 19 THE COURT: Yes, it's a number of pages. You know
- 20 what it is?
- 21 THE WITNESS: Well, this is, this is still 10 on the
- 22 board. Shall I say what 10A is? I'm sorry, sir.
- THE COURT: I'm asking about 10.
- 24 THE WITNESS: 10A is the second part of the proposal
- 25 submitted by CASI to the Advanced Technology Program. That

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1 year for the first time, to make it easier on proposers, we let

- 2 them propose in two parts. So they submitted the technical
- 3 plan first. If that passed, then we asked them for part two,
- 4 which is the commercialization plan. So this is the business
- 5 plan.
- 6 THE COURT: Is exhibit 10 the technical plan?
- 7 THE WITNESS: Yes, it is, sir.
- 8 THE COURT: And 10A is what?
- 9 THE WITNESS: Is how they will commercialize if the
- 10 technology is successful.
- 11 THE COURT: I see. What do you call the second part?
- 12 THE WITNESS: Well, we call it gate two proposal, but
- 13 the criteria are the commercialization criteria.
- 14 THE COURT: The commercialization criteria.
- 15 THE WITNESS: Yes, sir.
- 16 THE COURT: That's submitted by the proposed grantee.
- 17 THE WITNESS: Correct.
- 18 THE COURT: All right.
- MR. KWOK: Government offers --
- 20 THE COURT: Any objection, Mr --
- MR. RUBINSTEIN: No, your Honor.
- 22 THE COURT: 10A is then admitted in evidence.
- 23 (Government's Exhibit 10A received in evidence)
- 24 BY MR. KWOK:
- Q. Ms. Lide, now take a look at government exhibit offered for SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 identification 10B. Do you know what that is?
- 2 A. Yes. That's a detailed budget, which is submitted as part
- 3 of gate two, which is the commercialization plan.
- 4 O. And who submitted this document?
- 5 A. This is the document submitted as part of proposal from
- 6 CASI.
- 7 MR. KWOK: Government offers 10B.
- 8 THE COURT: 10B?
- 9 MR. RUBINSTEIN: No objection, your Honor.
- 10 THE COURT: Any objection? No objection. 10B is
- 11 admitted in evidence.
- 12 (Government's Exhibit 10B received in evidence)
- 13 THE COURT: This is, again, an application by CASI --
- 14 part of an application by CASI?
- 15 THE WITNESS: Yes, sir.
- 16 THE COURT: All right.
- 17 BY MR. KWOK:
- 18 Q. Ms. Lide, now if you could look at next exhibit, government
- 19 exhibit 11 marked for identification. Do you know what that
- 20 is?
- 21 A. Yes. It is the cover letter congratulating Dr. Karron on
- 22 being the recipient of a ATP award, and it's signed by the
- 23 acting director of the advanced technology program, Mark
- 24 Stanley.
- MR. KWOK: Government offers government exhibit 11?

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1 THE COURT: What's the date of that?

- 2 THE WITNESS: Date is October -- I can't read it, but
- 3 I -- it's probably either one or four. We always make awards
- 4 basically the first of the government fiscal year.
- 5 THE COURT: And what year?
- 6 THE WITNESS: 19 -- 2001.
- 7 THE COURT: This is notice of award?
- 8 THE WITNESS: I'm sorry, sir?
- 9 THE COURT: It's a notice of award, is that --
- 10 THE WITNESS: Yes, that's correct. It's a cover
- 11 letter.
- 12 THE COURT: It's a cover letter.
- 13 THE WITNESS: Right, which --
- 14 THE COURT: That CASI has received an award?
- 15 THE WITNESS: Yes, sir.
- 16 THE COURT: All right.
- 17 MR. KWOK: Government offers government exhibit 11?
- 18 MR. RUBINSTEIN: No objection, your Honor.
- 19 THE COURT: Exhibit 11 is admitted in evidence.
- 20 (Government's Exhibit 11 received in evidence)
- 21 Q. Now, let's take a look at government exhibit marked for
- 22 identification 12. Do you know what is that, Ms. Lide?
- 23 A. Yes, that is the cover from the grants office, office of
- the financial assistance award, and it would be the next page
- of what Dr. Karron received under the previous letter from Mark SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 Stanley. This is the actual award document itself.
- 2 MR. KWOK: Government offers government exhibit 12.
- 3 THE COURT: Any objection?
- 4 MR. RUBINSTEIN: None, your Honor.
- 5 THE COURT: Government exhibit 12 is admitted in
- 6 evidence.
- 7 (Government's Exhibit 12 received in evidence)
- 8 Q. Now, let's look at the next document, Ms. Lide, government
- 9 exhibit marked for identification 13. Do you recognize that
- 10 is?
- 11 A. Yes.
- 12 Q. What is it?
- 13 A. It provides details about the award outlined in government
- 14 exhibit 12 giving contacts technical and administrative, both
- 15 for the company and from NIST and then describing funding
- 16 limitations for the three-year period, the first year
- 17 describing how to make changes and other requirements as
- 18 appropriate to this award.
- 19 BY MR. KWOK:
- 20 Q. Is this document part of a package you referred to earlier
- 21 that was sent to CASI?
- 22 A. Yes. This document would be the next two pages after
- 23 government exhibit 11 and 12, this would follow.
- 24 MR. KWOK: Government offers government exhibit 13.
- 25 MR. RUBINSTEIN: Without objection, your Honor.

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1 THE COURT: No objection? All right. 13 is admitted

- 2 in evidence.
- 3 (Government's Exhibit 13 received in evidence)
- 4 Q. The next document, Ms. Lide, government exhibit 14, marked
- 5 for identification; do you recognize what that is?
- 6 A. Yes.
- 7 Q. What is it?
- 8 A. It is the summary budget that accompanied this proposal, so
- 9 it would be the budget of record when the project started.
- 10 Q. And who submitted this proposal?
- 11 A. CASI.
- 12 Q. And for what grants?
- 13 A. Computer Aided Surgery Incorporated.
- 14 Q. And what grants, what type of program?
- 15 A. I'm sorry. It was with the Advanced Technology Program.
- 16 MR. KWOK: Government offers government exhibit 14?
- 17 THE COURT: This accompanied 11, 12 and 13?
- 18 THE WITNESS: Yes, it does, sir.
- 19 THE COURT: All right, 14 is admitted in evidence.
- 20 (Government's Exhibit 14 received in evidence)
- 21 Q. Now, let's go back to government exhibit 12. Directing
- 22 your attention to the middle of the page, the block in bold,
- 23 can you read the second sentence in the bolded paragraph?
- 24 A. By signing the three documents, the recipient agrees to
- 25 comply with the award provisions checked below and attached.

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1 THE COURT: I'm sorry, what -- it's government exhibit

- 2 12?
- 3 THE WITNESS: Yes, sir. It's name -- it's financial
- 4 assistance award.
- 5 THE COURT: Yes.
- 6 THE WITNESS: Okay. And I'm reading --
- 7 THE COURT: Where are you reading?
- 8 THE WITNESS: The bold -- the second sentence of bold
- 9 in the largest block on that page. The sentence starts at the
- 10 left margin, by signing.
- 11 O. And what are these items checked below and attached?
- 12 A. The items checked below and attached outline all of the
- 13 rules and regulations which this grant must apply.
- 14 Q. Are those the same rules and conditions that you outlined a
- moment ago?
- 16 A. Yes, they're the rules and conditions that are in previous
- 17 government exhibits and listed in exhibit with the power points
- 18 kickoff meeting slides.
- 19 THE COURT: The only ones that apply are the ones that
- 20 are marked with an X?
- THE WITNESS: That is correct, sir.
- THE COURT: Is the special award conditions, do you
- 23 know whether that was marked with an X or not. My copy has a
- 24 hole in it.
- THE WITNESS: Yes, it is because this award had them,

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- 1 as you saw, in exhibit 13.
- THE COURT: All right.
- 3 O. If we could go to the bottom of that page. What signature
- 4 appears in the box labeled, authorized recipient official?
- 5 A. D. B. Karron.
- 6 Q. What is the title?
- 7 A. President.
- 8 Q. What is the date?
- 9 A. 5 October, '01.
- 10 Q. Let's turn to government exhibit 13. Ms. Lide, what is
- 11 this document again?
- 12 A. These are special award conditions for this particular
- 13 grantee.
- 14 Q. If we could zoom in to the section of the form titled
- funding limitations? What does that say?
- 16 A. It says that this is a three year project for \$2,000.
- 17 However, only \$800,000 are allocated.
- 18 Q. Ms. Lide, you said \$2,000?
- 19 A. Two million -- I apologize -- \$2 million award for three
- 20 years, but only 800,000 of that is allocated to the first year
- 21 budget period. And then it articulates that the recipient
- 22 shall submit in writing a revised budget and/or budget
- 23 narrative to the grants office for approval if other changes to
- the budget are needed.
- 25 THE COURT: Where is that?

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1 THE WITNESS: Under the part that's underlined saying

- October 1, 2001 through September 30, 2002. It says that if
- 3 there are results in changes to the budget or budget narrative
- 4 the recipient shall submit in writing a revised budget and/or
- 5 budget narrative to the grants officer for approval.
- 6 THE COURT: I just don't see where that is, what you
- 7 read from.
- 8 THE WITNESS: Okay, it's under the highlighted
- 9 October, underlined October 1, 2001, and it starts out, the
- 10 grants --
- 11 THE COURT: I'm sorry, just hold up because I'm not
- 12 familiar with these documents.
- 13 THE WITNESS: I'm sorry.
- 14 THE COURT: You are.
- 15 (Pause)
- 16 THE COURT: You are reading the grants officer may
- 17 require, is that --
- THE WITNESS: Yes, sir.
- 19 THE COURT: Additional clarification to support
- 20 budget?
- 21 THE WITNESS: Correct.
- 22 THE COURT: If that results in changes to the budgets
- 23 or budget narrative, the recipient shall submit in writing a
- 24 revised budget for approval. All right.
- THE WITNESS: Yes, sir.

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- 1 Q. If we could go to the next page of this exhibit under
- 2 paragraph seven, cost share. Ms. Lide, what is the cost share
- 3 arrangement at CASI?
- 4 A. CASI, in the original proposal proposed a cost share -- and
- 5 this is outlined in item seven -- that NIST -- for direct costs
- 6 NIST would contribute 96.39 percent or \$800,000 and CASI's
- 7 share would be 3.61 percent or 30 -- \$30,000, and that's for
- 8 the first year.
- 9 Q. Do you know how much grant money awarded to CASI was
- 10 actually withdrawn?
- 11 A. Approximately \$1.3 million.
- 12 THE COURT: In the first year?
- 13 THE WITNESS: No, sir, over two years. Only 800 could
- 14 be withdrawn for the first year.
- 15 Q. Now, let's go to government exhibit 14. And what is this
- 16 document again, Ms. Lide?
- 17 A. This is the summary budget for the three years of the
- 18 project.
- 19 Q. Now, Ms. Lide, after the kickoff meeting, did you have any
- 20 further interactions with the defendant?
- 21 A. Yes. We had phone calls, visits, e-mails.
- THE COURT: You, yourself?
- THE WITNESS: Yes, sir.
- 24 Q. Could you describe your interaction with the defendant?
- 25 A. Certainly. As a member of the project management team, we SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 are always available for consultation, and that can be
- face-to-face, that can be via e-mail, and that can be phone
- 3 calls. And in the case of this grant, all three occurred.
- 4 THE COURT: He asked for what your relationship was,
- 5 not what the team's relationship was.
- 6 THE WITNESS: I participated in all three of those. I
- 7 exchanged e-mails with Dr. Karron, I exchanged phone calls with
- 8 Dr. Karron, and I had face-to-face meetings with Dr. Karron.
- 9 Q. Who initiated these phone calls that you're referring to?
- 10 A. They can be initiated on either side, but usually the
- 11 recipient, Dr. Karron, initiated the contact.
- 12 Q. Why was he reaching out to NIST?
- 13 THE COURT: Objection sustained. You don't know why
- 14 he --
- 15 Q. What did he discuss when he called you?
- 16 A. Discussions had to do with perhaps changes in the
- 17 project -- not perhaps -- with changes in the project that he
- 18 would like to propose. Perhaps with -- not perhaps, sorry --
- 19 with meetings to which he would go and present a paper, the
- 20 possibility of coming to meet at NIST or us to go visit CASI,
- 21 any sort of activity in the day-to-day prong management.
- 22 Q. What type budget changes was he requesting?
- 23 A. Over the life of the project or early in the life, early in
- the project?
- 25 Q. Early in the project.

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1 A. Early in the project there were some minor changes to

- 2 basically personnel and equipment.
- 3 O. And what, if anything, did you discuss with the defendant
- 4 about the topic of rent?
- 5 A. Rent is an unallowable cost. He --
- 6 THE COURT: No.
- 7 MR. RUBINSTEIN: Objection, your Honor. It's not
- 8 responsive.
- 9 THE COURT: What did you say to the defendant about
- 10 rent?
- 11 THE WITNESS: It is an unallowable cost.
- 12 THE COURT: That came up in the conversation?
- 13 THE WITNESS: Yes, sir, it did.
- 14 THE COURT: All right.
- 15 Q. Now, Ms. Lide, what difference would it have made if the
- apartment was used, in part, as an office?
- 17 A. ATP does not pay rent, so it would make, make no
- 18 difference.
- 19 Q. Did you explain this to the defendant?
- 20 A. Yes.
- Q. What, if any, was his response?
- 22 A. That in -- for this grants, there were unique circumstances
- and it should be considered.
- 24 THE COURT: Can you tell us, approximately, when the
- 25 conversation took place?

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- 1 THE WITNESS: Very close to the beginning of the
- 2 project, certainly right after the beginning of the 2002.
- 3 That's the best of my recollection.
- 4 THE COURT: All right.
- 5 Q. And what did you say to him in response to that?
- 6 A. That ATP does not pay rent; it is an unallowable cost. He
- 7 could propose this to the grants officer and see what would
- 8 happen, but that it was -- it has never been done.
- 9 Q. What, if any, other categories did you discuss in your
- 10 conversations with the defendant?
- 11 A. One of the other major categories was renovations to the
- 12 existing space, because the computers were making the space
- 13 extremely hot, and we discussed improving that space with
- 14 additional electricity. And, once again, that is a capital
- improvement, which ATP does not pay for.
- 16 Q. Did you tell that to the defendant?
- 17 A. Yes.
- 18 Q. What, if anything, did you talk about with the defendant
- 19 about the equipment?
- 20 A. Equipment must stay within the amount on this budget, and
- 21 any change in the amount of equipment needed, any changes in
- 22 major purchases would have to be approved in writing before
- 23 that could occur.
- Q. And what, if anything, did you discuss with the defendant
- about fringe benefits?

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1 THE COURT: I'm sorry, about what?

- 2 Q. Fringe benefits?
- 3 MR. RUBINSTEIN: Objection, your Honor.
- 4 THE COURT: Did you discuss anything about fringe
- 5 benefits?
- 6 THE WITNESS: Yes, we did.
- 7 THE COURT: When was that, about?
- 8 THE WITNESS: Approximately the same time.
- 9 THE COURT: All right.
- 10 Q. What did you tell the defendant?
- 11 A. That there must be a written policy for fringe benefits
- 12 that is adhered to for all projects of the company, and is an
- industry standard, and all employees of the company must
- 14 receive the same fringe benefits.
- 15 Q. Can you unpack some of those terms, what do you mean when
- 16 you say, has to apply to all employees equally?
- 17 A. Well, once again, how we interpret fringe benefits,
- 18 according to the regulations that govern us, they're are things
- 19 like health insurance and vacation time, and perhaps tuition
- 20 assistance whatever. And one must have a written plan for what
- one will give one's employees. All employees must receive the
- 22 same, and it must be consistent with what other companies in
- 23 your industry is providing.
- 24 Q. So what happens if the company does not have a written
- 25 plan?

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- 1 A. Then they will not be approved.
- 2 Q. What does that mean?
- 3 A. That ATP cannot accept those as an allowable cost.
- 4 Q. Now, aside from having these conversations with Dr. Karron
- 5 over the telephone, did you talk to him in person?
- 6 A. Yes, we did.
- 7 Q. How did that come about?
- 8 A. Since the kickoff had been at the National Institute of
- 9 Standards And technology in November, and that was at our
- 10 request, because that was right after September 11th and we --
- 11 government employees were not allowed to travel. So after the
- 12 first of the year we felt it important to visit the facilities
- 13 of this project, and also to have a discussion with Dr. Karron
- about some of these changes and some of these conversations
- 15 that had occurred over the phone. So we requested a visit to
- 16 his company's facilities.
- 17 Q. Did you go, yourself, to this meeting?
- 18 A. I went myself with one other colleague from NIST, yes.
- 19 Q. And where did you go?
- 20 A. We went to Manhattan to CASI headquarters, which was on
- 21 East 33rd Street.
- 22 THE COURT: About when was this?
- THE WITNESS: This was in May of 2002.
- 24 Q. And what was the building or establishment that you went
- 25 to?

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- 1 A. The building was an apartment building.
- Q. And whose apartment was that?
- 3 A. It was Dr. Karron's apartment.
- 4 Q. What, if anything, did Dr. Karron say about why he was
- 5 doing research out of his apartment?
- 6 A. That attempts to get lab space in Lower Manhattan or at the
- 7 university facility had not yet come to fruition.
- 8 Q. And what did you observe when you went into that apartment?
- 9 A. I observed a room of largely computer equipment, and I
- 10 observed some individuals whose acquaintance I had not met
- 11 before that.
- 12 Q. And what, if anything, did Dr. Karron say about these
- individuals that you had not met?
- 14 A. Well, as usual with site visits -- we call these site
- 15 visits -- and as usual with site visits we go around and
- 16 introduce ourselves. And Dr. Karron introduced these people as
- 17 having various responsibilities in CASI.
- 18 Q. What, if anything, about the budget did you discuss during
- 19 this visits?
- 20 A. We discussed proposed changes in equipment categories.
- 21 Also, since there were new people there, we asked for
- 22 justification of what those people were doing, whether they
- 23 were on ATP funds or not. Because, as we said, for them to be
- 24 working on our project, they need prior approval. So we
- 25 explained the need for a revised budget request and

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- 1 documentation to substantiate it.
- 2 Q. Did you have this conversation with Dr. Karron as well?
- 3 A. Yes.
- 4 Q. Now, Ms. Lide, was this the only site visits you made to
- 5 CASI?
- 6 A. No. That was in May of 2002, and the budget issues
- 7 continued over the summer, and so the project management team
- 8 felt it imperative to have a voice-to-voice conversation again
- 9 with Dr. Karron, and we paid another site visit in October of
- 10 2002.
- 11 Q. Now, for the other grants that you oversee, Ms. Lide, how
- many site visits do you typically do?
- 13 A. The typical --
- 14 MR. RUBINSTEIN: Objection, your Honor, not relevant.
- THE COURT: The objection's sustained.
- 16 Q. Ms. Lide, why did you go to this site visit for a second
- 17 time?
- 18 MR. RUBINSTEIN: Objection, your Honor.
- 19 THE COURT: Was there a reason?
- 20 THE WITNESS: Yes sir. I thought I articulated --
- THE COURT: I thought she answered.
- 22 THE WITNESS: I will be happy to repeat it you want.
- THE COURT: No, it's all right.
- 24 THE WITNESS: Okay.
- Q. What did you hope to accomplish going back the second time?

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- 1 A. What we hoped to accomplish was to have a discussion to try
- 2 to iron out the budget differences, because that had become a
- 3 major issue in this grant, was to get a budget that the awardee
- 4 could live with, and yet met the government rules and
- 5 regulations.
- 6 By this time, if you remember the dates correctly, the
- 7 first year of the grants was over. So what we hoped to explain
- 8 to the recipient was by then it should not be an estimated
- 9 budget any more; he should be able to produce actual costs for
- 10 year one.
- 11 Q. Did you discuss this with Dr. Karron?
- 12 A. Yes. At that point we started requesting the actual
- 13 figures for the year one, what had actually been spent.
- 14 Q. And what, if anything else, did you discuss with the
- 15 defendant about the budget during this second site visit?
- 16 A. Typical issues were equipment and justification of who was
- 17 working on the project, personnel who was working as an
- 18 employee versus subcontract. We had trouble getting our hands
- 19 on that.
- 20 Q. And what did you tell Dr. Karron that he had to do?
- 21 A. Submit a revised budget with justification for the changes
- 22 in equipment and who was working on the project under ATP money
- and in which category, subcontractors or employees.
- Q. Now, aside from these two site visits, did you have other
- in person meetings with the defendant?

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1 A. Yes. There was one, possibly two times that the defendant

- 2 came to NIST and we had discussions with him there.
- 3 Q. What did the defendant say about the purpose of the
- 4 meeting?
- 5 A. Once again, the budget was the big deal, to iron out the
- 6 budget was the main issue.
- 7 Q. And what did you discuss when you met?
- 8 THE COURT: When was this meeting, when was this
- 9 meeting?
- 10 THE WITNESS: The one meeting I remember distinctly,
- 11 sir, was in the summer of 2002 between my two site visits, so I
- 12 believe it would be July, if I remember correctly.
- 13 THE COURT: That was before the --
- 14 THE WITNESS: Before the second site visit.
- 15 THE COURT: Before the second site visit by your
- 16 staff --
- 17 THE WITNESS: That is correct.
- 18 THE COURT: -- and yourself.
- 19 THE WITNESS: Yes, sir.
- 20 Q. What, if anything, did you discuss?
- 21 A. The changes that were proposed and the need to document
- 22 them, justify them and get written approval before the project
- 23 could go forth with the new budget.
- Q. And what, if anything, did you discuss relating to the
- 25 technical aspect of your project?

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- 1 A. We also tried to look ahead, because the project would need
- 2 some technical input and changes in year three because it was
- 3 going to use some human and animal subjects, and we suggested
- 4 that we start that process now because it was time consuming.
- 5 Q. And what did the defendant say about that?
- 6 THE COURT: This is in July?
- 7 THE WITNESS: Yes, sir. That was in July; yes, sir.
- 8 THE COURT: All right.
- 9 A. I was actually shocked, because instead of saying --
- 10 MR. RUBINSTEIN: Objection. I move to strike.
- 11 THE COURT: Objection sustained.
- 12 Q. What did the defendant say?
- 13 A. That no approval would be needed if he would just come and
- 14 schmooze and take us to lunch.
- 15 Q. Let's turn to government exhibit marked for identification
- 16 30. Ms. Lide, do you recognize this document?
- 17 A. Yes, I do.
- 18 O. What is this document?
- 19 A. This is a document that the project management team sent to
- 20 the grants officer requesting a government audit of this
- 21 project.
- 22 Q. And which grants and company does this letter relate to?
- 23 A. The award to CASI.
- 24 MR. KWOK: Government offers government exhibit 30?
- 25 MR. RUBINSTEIN: I'm going to object, your Honor.

863ZKAR2 Lide - direct

- 1 THE COURT: You object to 30?
- 2 MR. RUBINSTEIN: Yes, your Honor.
- 3 THE COURT: Seems to me it's objectionable, Mr. Kwok.
- 4 BY MR. KWOK:
- 5 Q. Well, Ms. Lide, is this document kept in the course of a
- 6 regularly conducted business activity?
- 7 A. This would be the way in the Advanced Technology Program
- 8 that we would request an audit of a company.
- 9 Q. And was this document prepared by someone with knowledge
- 10 of -- transmitted by a person with knowledge of the information
- 11 containing within it?
- 12 A. Yes, this document is prepared by the ATP project
- management team, including myself.
- 14 Q. And was this document prepared as soon as the information
- 15 contained within it became available?
- 16 A. Yes, it was.
- MR. KWOK: Government offers exhibit 30.
- 18 MR. RUBINSTEIN: Objection, your Honor.
- 19 THE COURT: Is it -- is the document like this
- 20 prepared in the course of the agency's business?
- 21 THE WITNESS: Yes, sir, it is.
- 22 THE COURT: And is it the regular course of the
- agency's business to keep these documents?
- 24 THE WITNESS: Yes. The Advanced Technology Program is
- 25 heavily audited and inspected, and we need documentation of our SOUTHERN DISTRICT REPORTERS, P.C.

863ZKAR2 Lide - direct

- 1 actions.
- 2 THE COURT: That seems to me it's admissible on those
- 3 grounds. But not it's not -- this has to do with an internal
- 4 communication in the agency, and it would be admissible on
- 5 those grounds, Mr. Rubinstein.
- 6 MR. RUBINSTEIN: I don't believe so, your Honor. I
- 7 stated my objection.
- 8 THE COURT: You want to tell me why not at sidebar?
- 9 I think the smart thing to do would be for the jury to
- 10 get a break at this point and come back while we have our
- 11 discussion and see if we can kill two birds with one stone, as
- 12 the expression goes.
- 13 (Jury exits the courtroom)
- 14 (In open court; jury not present)
- THE COURT: Can the witness can step down, Mr.
- 16 Rubinstein?
- 17 MR. RUBINSTEIN: Pardon?
- 18 THE COURT: You want the witness to step down or not?
- 19 MR. RUBINSTEIN: Only if she needs a break. I don't
- 20 care if she's here.
- 21 THE COURT: You want a break?
- THE WITNESS: Whatever is good for you.
- 23 THE COURT: Well, maybe you could explain to me why
- 24 you think I shouldn't admit this, if it's kept in the regular
- 25 course of business.

863ZKAR2 Lide - direct

1 MR. RUBINSTEIN: Yes, your Honor. Because under

- 2 403 --
- 3 THE COURT: What?
- 4 MR. RUBINSTEIN: I think when you balance it, they're
- 5 making all kinds of statements and findings here of five
- 6 versions of the actual --
- 7 THE COURT: You want an instruction to the jury of
- 8 some sort?
- 9 MR. RUBINSTEIN: Well -- are they going to call another
- 10 witness, Judge, in relation to this?
- 11 THE COURT: I don't know.
- 12 MR. RUBINSTEIN: Because if they are, then maybe it
- may be academic to press an objection.
- 14 THE COURT: This is a memorandum from Ms. Lide, who is
- 15 the witness.
- MR. RUBINSTEIN: It's self-serving.
- 17 THE COURT: To the NIST grants officer through Miss
- 18 Sobolewski and Miss Cuthill, her supervisor, I gather.
- 19 THE WITNESS: Correct.
- 20 MR. RUBINSTEIN: It's self-serving, it's buttressing
- 21 what she's testifying to.
- 22 THE COURT: She hadn't testified to this part.
- MR. RUBINSTEIN: She want to -- they're trying to
- 24 introduce it into evidence.
- 25 MR. KWOK: Your Honor, if I may, it's really a classic SOUTHERN DISTRICT REPORTERS, P.C.

863ZKAR2 Lide - direct

1 business record. It is made contemporaneously with the events

- 2 happening at around the same time.
- 3 THE COURT: It goes through a series of events. It
- 4 goes through five different budgets. It relates to five
- 5 different budgets.
- 6 MR. KWOK: It does, but the -- I guess the problem
- 7 this memo was trying to relate to was that the numbers in those
- 8 five different budgets were all different, and this memo was
- 9 prepared to note that problem when it became obvious to people
- 10 at NIST. And this witness is on the stand. She can be
- 11 cross-examined on it if defense counsel seems to think that
- 12 it's self serving, but it is admissible because the author of
- 13 this memo was Ms. Lide, who is the witness here.
- 14 MR. RUBINSTEIN: Judge that's why I feel exactly why
- 15 she shouldn't, because she's here to testify, and why buttress
- 16 her testimony with a document?
- 17 THE COURT: To show that she made a contemporaneous
- 18 report along those lines.
- 19 MR. KWOK: And if Ms. Lide wasn't the author of this
- 20 document, Mr. Rubinstein would object that the witness would
- 21 have no personal knowledge. So this is the classic type of
- 22 situation, it seems to me.
- 23 THE COURT: I think she should testify to it before
- 24 it's admitted in evidence, though. I think she should testify
- 25 to the exhibit in question.

863ZKAR2 Lide - direct

1 MR. KWOK: Very well, your Honor.

- 2 THE COURT: All right.
- 3 MR. RUBINSTEIN: Could we step out for a moment,
- 4 Judge?
- 5 THE COURT: Yeah.
- 6 MR. RUBINSTEIN: Thank you.
- 7 THE COURT: Let's step out and come back as soon as
- 8 possible.
- 9 MR. RUBINSTEIN: I shall, your Honor.
- 10 (Recess)
- 11 (Jury entering)
- 12 THE COURT: All right, please be seated. Let's
- 13 proceed now, Mr. Kwok.
- MR. KWOK: Thank you, your Honor.
- 15 Q. Ms. Lide, if you could take a look at government exhibit
- 16 marked for identification 31?
- 17 THE COURT: Let's --
- THE WITNESS: 31?
- 19 THE COURT: We're not past 30 yet. I haven't admitted
- 20 30.
- 21 MR. KWOK: I understand. I'm --
- 22 THE COURT: All right.
- 23 MR. KWOK: I think it would lay the foundation.
- 24 THE COURT: All right.
- Q. Do you know what government exhibit marked for

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863ZKAR2 Lide - direct

- 1 identification 31 is?
- 2 A. It's the cover page of a revised budget that was submitted
- 3 by the company CASI dated August 1, 2002.
- 4 MR. KWOK: Government offers government exhibit 31.
- 5 THE COURT: Any objection?
- 6 MR. RUBINSTEIN: None your Honor.
- 7 BY MR. KWOK:
- 8 Q. Let's turn --
- 9 THE COURT: 31 is admitted in evidence.
- 10 (Government's Exhibit 41 received in evidence)
- 11 Q. Ms. Lide, if you could --
- MR. RUBINSTEIN: Your Honor --
- 13 THE COURT: I'm sorry, Mr. Rubinstein?
- MR. RUBINSTEIN: I'm going to object, your Honor, that
- it's not a complete document.
- 16 THE COURT: What?
- 17 MR. RUBINSTEIN: It's not a complete document.
- 18 THE COURT: Is it -- is this the budget that was
- 19 submitted, Ms. Lide, or is it --
- 20 THE WITNESS: Yes, this is the multi year budget and,
- 21 as such, is a document -- it does not contain the budget,
- 22 budget narrative, if -- but this is the budget that would
- 23 govern -- you know, if it were accepted, it would govern the
- 24 activities of the project.
- THE COURT: So what is it accompanied by?

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863ZKAR2 Lide - direct

- 1 THE WITNESS: In order to --
- 2 THE COURT: Is it a complete document or did he submit
- 3 other documents with it?
- 4 THE WITNESS: Along with this budget, we request the
- 5 narrative, which is a explanation of each of these line items
- 6 for each year, which is not in this folder.
- 7 THE COURT: All right. But that's, these -- these are
- 8 two documents, this is just the budget?
- 9 THE WITNESS: Correct.
- 10 THE COURT: All right, I'll allow 31.
- 11 (Government's Exhibit 31 received in evidence)
- 12 Q. Now, let's take a look at government exhibit marked for
- 13 identification 32. Do you recognize that document, Ms. Lide?
- 14 A. Yes.
- 15 Q. What is that?
- 16 A. It is another proposed budget submitted by CASI on October
- 17 20th.
- 18 MR. KWOK: Government offers government exhibit 32.
- 19 MR. RUBINSTEIN: Objection, your Honor. That -- it's
- 20 missing a narrative.
- 21 THE COURT: Same ruling, I'll allow it, these
- 22 documents exhibit, budgets, exhibit 32 is admitted in evidence.
- 23 (Government's Exhibit 32 received in evidence)
- Q. Next document, Ms. Lide, government exhibit marked for
- 25 identification 33, do you know what that is?

863ZKAR2 Lide - direct

1 A. Yes. There are actually two documents in here. There's

- 2 the estimated multi year budget as submitted on December 2nd,
- 3 along with the budget narrative explaining all of the figures
- 4 on that budget.
- 5 MR. KWOK: Government offers government exhibit 33.
- 6 MR. RUBINSTEIN: No objection, your Honor.
- 7 THE COURT: Exhibit 33 is admitted in evidence.
- 8 (Government's Exhibit 33 received in evidence)
- 9 Q. The next document is marked for identification government
- 10 exhibit 34; do you know what it is, Ms. Lide?
- 11 A. Yes. It consists of three pieces, the first of which is
- 12 the e-mail transmitting another -- sorry -- another proposed
- 13 budget; the second page is the estimated budgets, and then the
- 14 rest of the page is, again consists of the budget narrative
- describing all of the lines on the budget.
- 16 THE COURT: What date was this?
- 17 THE WITNESS: 12 -- this one was 12/20.
- THE COURT: That's exhibit 33?
- 19 THE WITNESS: 34, sir.
- 20 THE COURT: What was the exhibit 33, when was that?
- 21 THE WITNESS: 12/2.
- 22 THE COURT: I see. Sorry.
- THE WITNESS: It's confusing.
- 24 THE COURT: 34.
- 25 MR. KWOK: Government offers exhibit 34.

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863ZKAR2 Lide - direct

- 1 MR. RUBINSTEIN: No objection, your Honor.
- THE COURT: No objection, to 34? All right.
- 3 (Government's Exhibit 34 received in evidence)
- 4 Q. Next document is marked for identification government
- 5 exhibit 35. Do you know -- do you recognize what that is?
- 6 A. Yes. Once again it consists of the transmission of another
- 7 budget, the budget itself and the narrative describing each
- 8 line item on the budget.
- 9 MR. KWOK: Government offers government exhibit 35?
- 10 THE COURT: That's --
- 11 THE WITNESS: 12/24.
- 12 THE COURT: 24, yes? 35 is admitted in evidence.
- 13 (Government's Exhibit 35 received in evidence)
- 14 Q. The last document is government exhibit 36. Do you
- 15 recognize what this is?
- 16 A. Yes, I do. It's a budget submission dated February 25th
- 17 '03, again two parts to it, the budget itself, and the
- 18 narrative describing each of the line items.
- 19 MR. KWOK: Government offers government exhibit 36.
- 20 MR. RUBINSTEIN: Without objection, your Honor.
- 21 THE COURT: All right, 36 is admitted in evidence.
- 22 (Government's Exhibit 36 received in evidence)
- 23 Q. Ms. Lide, what, if any, issues did you notice in receiving
- these budgets from CASI and the defendant?
- 25 A. In analyzing these budgets, to recommend approval or not SOUTHERN DISTRICT REPORTERS, P.C.

863ZKAR2 Lide - direct

1 approval to the grants office, we recognized that in each of

- the last four budgets, which should have reflected year one
- 3 actual costs, there were discrepancies.
- 4 Q. When you refer to year one actual costs, what exactly are
- 5 you referring to?
- 6 A. Well, during the course of the first year, one can estimate
- 7 that one is going to spend a certain amount of money. After
- 8 the year's over, one should have receipts and know exactly how
- 9 much one spent, so that's what we call actual costs.
- 10 THE COURT: When you say discrepancies, you mean one
- 11 from another?
- 12 THE WITNESS: Yes, sir. The last four where year one
- 13 should have been actual, because year one ended September 30th.
- 14 So after September 30th, a company knows exactly how much it
- 15 has spent in each category. And yet when we looked at these
- 16 budgets, the year ones had discrepancies in them.
- 17 THE COURT: You say there were discrepancies in the
- 18 last four. You mean exhibit 33, 34, 35 and 36?
- 19 THE WITNESS: There might be the last five. One,
- 20 two -- wait a minute, October 20, December 2nd, December 20th
- 21 and February 25th, so 32 -- sorry. 32 through 36, so that's
- one, two, three, four, five, actually.
- THE COURT: When was 32 submitted?
- THE WITNESS: The date on 32 is October 20th of 2002.
- 25 THE COURT: I see.

863ZKAR2 Lide - direct

1 Q. Ms. Lide, what, if any, document did you prepare to

- 2 document this issue?
- 3 A. Because we found it difficult to reconcile these budgets,
- 4 especially the actuals for year one, we were concerned that the
- 5 company was not able to account for government spending, and we
- 6 prepared a document for our supervisor to send to the grants
- 7 office requesting an audit.
- 8 Q. I'm now showing you government exhibit marked for
- 9 identification government exhibit 30.
- 10 MR. RUBINSTEIN: Your Honor, that's -- I don't believe
- 11 that's in evidence, your Honor.
- 12 THE COURT: It's not. He just said I'm showing it to
- 13 you.
- MR. RUBINSTEIN: The jurors, your Honor --
- 15 THE COURT: We haven't -- it's not in evidence yet.
- 16 30 is not in evidence?
- 17 A. I'm sorry. Please go ahead. Your question.
- 18 Q. Do you recognize what that document is?
- 19 A. Yes, that's the request that I wrote with my partner
- 20 requesting an audit.
- 21 MR. KWOK: Government offers government exhibit 30?
- 22 MR. RUBINSTEIN: Objection, your Honor.
- 23 THE COURT: Objection overruled. Exhibit 30 is
- 24 admitted in evidence.
- 25 (Government's Exhibit 30 received in evidence)

SOUTHERN DISTRICT REPORTERS, P.C.

863ZKAR2 Lide - direct

- 1 Q. Ms. Lide, what was your purpose in sending this document?
- 2 MR. RUBINSTEIN: Objection, your Honor.
- 3 THE COURT: I think she's explained her purpose.
- 4 Q. Ms. Lide, why did the fact that the numbers were
- 5 inconsistent a concern to you?
- 6 MR. RUBINSTEIN: Objection, your Honor.
- 7 THE COURT: I will allow that question.
- 8 A. At that time, the company should have been able to give us
- 9 exactly what was spent for year one, and when it was unable to
- 10 do that over the course of five budgets, we were concerned, as
- 11 responsible government employees for the accounting of the
- 12 government funds to that project.
- 13 Q. Let's turn to page two of this exhibit, if you could zoom
- in on the top. Ms. Lide, what is that table?
- 15 A. That is a table that we prepared summarizing the year one
- 16 costs from the five budgets submitted after year one, and they
- are government exhibits 32 through 36.
- 18 Q. Can you just walk us through an example of how it shows the
- 19 what you just testified to?
- 20 A. Well, certainly. If you look at any one of the lines, for
- 21 example, equipment on 10/20, the company said it spent \$303,400
- on equipment during year one, and that number changed on
- 23 December 2nd, and then changed again on December 20th. And
- looking at any line item, there are many such changes.
- Q. After you had noticed that, the inconsistency, did you SOUTHERN DISTRICT REPORTERS, P.C.

863ZKAR2 Lide - direct

- 1 speak to Dr. Karron?
- 2 A. I believe we spoke to Dr. Karron throughout the process. I
- 3 don't recall whether we spoke to Dr. Karron after the
- 4 February 25th budget or not on this issue.
- 5 Q. When you did speak to the defendant on this issue, what did
- 6 you tell him?
- 7 MR. RUBINSTEIN: Objection, your Honor. Could we fix
- 8 a --
- 9 THE COURT: Could we have a date, please?
- 10 MR. RUBINSTEIN: I think she said she doesn't recall
- 11 talking to him?
- 12 A. I do recall talking to him about year one actuals from the
- 13 period of October. In fact, when we visited in October, we
- 14 discussed that. Through the course of this submission of the
- 15 last budget in February, I do not recall if I had any further
- 16 conversations with him on this or not.
- 17 THE COURT: But it's your testimony that you did
- 18 discuss with him year one.
- 19 THE WITNESS: That we needed year one actuals,
- 20 correct.
- 21 THE COURT: And did you discuss with him the fact
- there were discrepancies in these budgets?
- THE WITNESS: Yes, sir.
- THE COURT: After each budget was submitted?
- THE WITNESS: Yes, which is one of the reasons we

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863ZKAR2 Lide - direct

1 requested a new budget with the requisite documentation that

- 2 would describe the actuals.
- 3 THE COURT: All right. Objection overruled. Go
- 4 ahead.
- 5 Q. Ms. Lide, did the defendant submit any amendments to the
- 6 plan that were approved?
- 7 A. Yes, he did.
- 8 Q. I'm showing you marked for identification government
- 9 exhibit 21. Do you recognize that document?
- 10 A. Yes, I do.
- 11 Q. What is it?
- 12 A. It is amendment number one, which means a change was
- 13 requested and approved, and this is written approval.
- 14 Q. And which grants -- and what company does this document
- 15 relate to?
- 16 A. This is the grant to CASI computer Aided Surgery
- 17 Incorporated, and this particular amendment changes the name of
- 18 the administrative contact.
- 19 MR. KWOK: Government offers exhibit 21?
- THE COURT: What's the date on this?
- 21 THE WITNESS: The date is, it was signed by our grants
- officer on October 24th, '01.
- 23 THE COURT: All right. Exhibit 21, there is no
- 24 objection to, 21 is admitted.
- 25 (Government's Exhibit 21 received in evidence)

SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR3 Lide - direct

- 1 BY MR. KWOK:
- 2 Q. Let's look at the next document marked for identification
- 3 Government Exhibit 22. Do you recognize what that document is?
- 4 A. Yes.
- 5 O. What is it?
- 6 A. That is amendment 2, and the reasons for this amendment are
- 7 to revise the administrative contact's name, to correct total
- 8 estimated costs for the budget year, to incorporate a new
- 9 budget, to remove a special award condition, and to indicate
- 10 what is affected by these actions.
- 11 O. What is the date on that document?
- 12 A. January 4th of 2002.
- 13 MR. KWOK: Government offers Government Exhibit 22.
- MR. RUBINSTEIN: No objection, your Honor.
- THE COURT: No objection?
- 16 MR. KWOK: Just stay with that document for a second.
- 17 THE COURT: Exhibit 22 is admitted into evidence.
- 18 (Government's Exhibit 22 received in evidence)
- 19 Q. You mentioned some changes to the budget. What was the
- 20 nature of the changes to the budget?
- 21 A. The nature of the changes are documented actually in this
- 22 amendment, as we always do. They were some minor changes in
- 23 personnel salaries and wages, minor changes in fringe benefits,
- in travel and in equipment, and then it added a new line to the
- 25 budget as we discussed earlier. To add a new line one has to SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR3 Lide - direct

1 get prior approval, and that line is material and supplies.

- Q. Was that amendment approved?
- 3 A. Yes. When one gets a written amendment like this signed by
- 4 the grants officer it means that the changes are approved.
- 5 Q. Let's turn to the next document marked for identification,
- 6 Government Exhibit 23.
- 7 THE COURT: Could we go back one second? In this
- 8 document it says that the administrator is Elisha Gurfein.
- 9 THE WITNESS: Yes. Amendment number 1, sir, made Lee
- 10 Gurfein the administrative contact, and the company requested
- 11 that that name be formalized to instead of Lee, Elisha for the
- 12 first name.
- 13 THE COURT: All right.
- 14 Q. Looking at Government Exhibit marked for identification,
- 15 Government Exhibit 23 now, do you recognize that document?
- 16 A. Yes, I do.
- 17 Q. What is it?
- 18 A. It is amendment 3, and what it does is it allocates funding
- 19 for the second year of the project. If you remember, for the
- 20 first year I said that the project could expend \$800,000, and
- 21 what this does is it authorizes an additional expenditure for
- the second year of another \$600,000.
- 23 Q. What is the date on this document?
- 24 A. 7/16/02.
- MR. KWOK: Government offers Government Exhibit 23.

SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR3 Lide - direct

- 1 MR. RUBINSTEIN: No objection, your Honor.
- THE COURT: 23 is admitted in evidence.
- 3 (Government's Exhibit 23 received in evidence.
- 4 Q. The next document is marked for identification as
- 5 Government Exhibit 24. Do you recognize this document?
- 6 A. Yes, I do.
- 7 Q. What is it?
- 8 A. It's amendment 4.
- 9 Q. What's the date?
- 10 A. 7/23/302.
- 11 Q. And what is the nature of this amendment?
- 12 A. The nature is to allow the recipient to use what we call
- 13 ASAP, which is Automated Standard Application for Payments,
- 14 which means one can withdraw on that bank account
- 15 electronically prior to the month in which the money is spent.
- 16 MR. KWOK: Government offers Government Exhibit 24.
- 17 MR. RUBINSTEIN: No objection, your Honor.
- 18 THE COURT: Government Exhibit 24 is admitted in
- 19 evidence.
- 20 (Government's Exhibit 24 received in evidence)
- 21 O. The last document of the batch is Government Exhibit 25.
- 22 Do you recognize that document?
- 23 A. Yes, I do.
- Q. What is it?
- 25 A. It is asking for a 60-day extension to when the first year SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR3 Lide - direct

- 1 audit should be completed.
- 2 Q. And what is the date?
- 3 A. 12/17/02.
- 4 MR. KWOK: The government offers Government Exhibit
- 5 25.
- 6 MR. RUBINSTEIN: No objection.
- 7 THE COURT: 25 is admitted.
- 8 (Government's Exhibit 25 received in evidence)
- 9 Q. Aside from amendment 2 which contains the budget changes
- 10 you testified about, do these other amendments that I just
- 11 showed you make any changes to the budget --
- 12 A. No.
- 13 Q. -- in terms of what the grant recipient can spend grant
- 14 money on?
- 15 A. No, with the exception that we did add year two money. It
- 16 was not a change in the recipient's budget, but we did make a
- 17 change that year two money could be extended.
- 18 Q. Aside from that, anything else?
- 19 A. No.
- 20 THE COURT: Year two money could be expended in year
- 21 one.
- 22 THE WITNESS: No, sir, starting October 1 in year two.
- 23 We would have to put the second year money in the system early
- just because it takes time.
- 25 Q. Is that a routine type of amendment?

8637KAR3 Lide - direct

1 A. Sorry. Which one? Putting year two in?

- 2 Q. Yes.
- 3 A. Yes, we usually put those second year monies in during the
- 4 summer months, even though it cannot be expended until after
- 5 the first year is completed.
- 6 Q. I am showing you what has been marked for identification
- 7 Government Exhibit 26. Do you recognize what that document is?
- 8 A. Yes, I do.
- 9 O. What is it?
- 10 A. It is amendment 6, suspending effective immediately this
- 11 award.
- 12 Q. What is the date on that document?
- 13 A. June 27, 2003.
- MR. KWOK: Government offers Government Exhibit 26.
- MR. RUBINSTEIN: No objection.
- 16 THE COURT: 26 is received.
- 17 (Government's Exhibit 26 received in evidence)
- 18 Q. What was the reason?
- 19 A. The reason is not --
- 20 MR. RUBINSTEIN: Objection. I object to the question
- 21 the reason for the suspension.
- 22 THE COURT: I haven't heard the question yet.
- 23 Q. What was the reason for the suspension of the grant?
- 24 A. The reason --
- 25 THE COURT: Wait a minute. The exhibit we've got SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR3 Lide - direct

- 1 here --
- 2 MR. KWOK: 26.
- 3 THE COURT: Well, I don't want this witness to give
- 4 her summary. If there is an official reason that's in the
- 5 document, she can read it.
- 6 THE WITNESS: With your permission, I will read it.
- 7 THE COURT: All right.
- 8 THE WITNESS: "This cooperative agreement is being
- 9 amended to suspend this award effective immediately for
- 10 noncompliance of special award 7."
- 11 BY MR. KWOK:
- 12 Q. If we could zoom in on that. And what is special award
- 13 number 7?
- 14 A. I will be happy to read it. "It's based on preliminary
- 15 audit information. You are in noncompliance of special award
- 16 condition 7, cost share."
- 17 Q. And what does that mean?
- 18 A. As we discussed earlier, this proposer proposed to share
- 19 the direct costs of the project. The government was going to
- 20 put in a little over 96 percent, and the proposer was going to
- 21 put in between 3 and 4 percent, and at this point our
- 22 preliminary information showed that the recipient had not given
- 23 his share of the direct costs.
- Q. Ms. Lide, what if any involvement did you have with the
- 25 grant for CASI after the grant was suspended?

8637KAR3 Lide - direct

1 A. We continued to have e-mail and telephone exchanges because

- 2 CASI was eager to get the grant back in operation.
- 3 Q. What if anything did you tell the defendant about what he
- 4 needed to do to restart the grant?
- 5 A. Basically that he needed to make his part of the cost share
- 6 and work with the grants officer and grants office to make sure
- 7 that happened.
- 8 Q. What happened?
- 9 A. Nothing.
- 10 MR. KWOK: One moment, your Honor?
- 11 THE COURT: I'm sorry?
- MR. KWOK: One moment.
- No further questions.
- 14 THE COURT: All right. Cross-examination,
- 15 Mr. Rubinstein.
- MR. RUBINSTEIN: Thank you, your Honor.
- 17 CROSS EXAMINATION
- 18 BY MR. RUBINSTEIN:
- 19 Q. Good morning, Ms. Lide.
- 20 A. Good morning.
- 21 Q. Now, when is the last time that you saw Dr. Karron before
- 22 coming to court here yesterday?
- 23 A. To the best of my knowledge, it would be when we made the
- second site visit in October of 2002.
- Q. And when were you contacted by the federal law enforcement SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR3 Lide - cross

- 1 authorities on this case?
- 2 A. That would have been spring of 2005, if I remember
- 3 correctly.
- 4 Q. Well, let me show you --
- 5 A. Either 2004 or 5.
- 6 Q. Did you review any documentation before you came here to
- 7 testify, Ms. Lide?
- 8 A. Yes, I did.
- 9 Q. And did you review notes of interviews with you?
- 10 A. An interview, no. I was requested to make some notes, but
- 11 it was not an interview.
- 12 Q. And did you prepare some notes?
- 13 A. Yes, I did.
- 14 Q. And did you submit that -- did you give those notes to
- 15 anybody?
- 16 A. Yes.
- 17 Q. And who did you give the notes to?
- 18 A. The special agent.
- 19 Q. And is that sometime shortly after you met the special
- 20 agent for the first time?
- 21 A. Yes.
- 22 Q. And is the special agent here in court?
- 23 A. Yes.
- Q. And who is that special agent?
- 25 A. Rachel Ondrik.

8637KAR3 Lide - cross

1 Q. And did you title that report "administratively

- 2 restricted"?
- 3 A. Absolutely.
- 4 Q. And let me show you what's been marked as --
- 5 Does she have any of the 3500 material here?
- 6 THE COURT: I would be surprised if she does.
- 7 Q. Let me show you what has been marked as Government Exhibit
- 8 351-A and ask you if that is the report that you submitted to
- 9 the agent.
- 10 DEPUTY COURT CLERK: 3501-A?
- MR. RUBINSTEIN: 3501-A, as in apple.
- 12 THE COURT: I don't know that she called it that. She
- said they were notes, if I understood you.
- 14 THE WITNESS: Right. These were notes that I was
- asked to prepare based on my recollection of this grant.
- 16 THE COURT: Who asked you to prepare them?
- 17 THE WITNESS: The special agent.
- 18 THE COURT: I see.
- 19 THE WITNESS: And now that I see the date on it, it
- 20 was not shortly after the first meeting.
- 21 Q. As a matter of fact, after you looked at this document,
- 22 does that refresh your recollection as to when you met this
- 23 special agent for the first time about this case?
- 24 A. No. To the best of my recollection, it was spring of '05.
- Q. And when did you prepare -- at that meeting, were you asked SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR3 Lide - cross

1 to prepare notes of your recollection of your involvement with

- 2 Dr. Karron and CASI, Inc.?
- 3 A. No.
- 4 Q. Did there come a time that you were asked to prepare notes?
- 5 A. Yes.
- 6 Q. And when was that?
- 7 A. That was shortly before those notes were prepared.
- 8 Q. So, you met the agent a second time?
- 9 A. The first time, the agent requested that we have no more
- 10 contact with Dr. Karron.
- 11 Q. And did the agent discuss the case with you on the first
- 12 occasion?
- 13 A. No, it was all communication should go through the special
- 14 agent.
- 15 Q. Did you prepare any notes after you met with the special
- 16 agent?
- 17 A. The first time?
- 18 Q. Yes.
- 19 A. No, sir.
- 20 Q. And you prepared notes. Did you use anything to refresh
- 21 your recollection to prepare the notes that you subsequently
- gave to the agent?
- 23 A. We keep project management files which are extremely useful
- 24 as historical documents.
- 25 THE COURT: And those were used to prepare these SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR3 Lide - cross

- 1 notes?
- THE WITNESS: Yes, they are kept in a secure place and
- 3 accessible with a need to know.
- 4 Q. So, you have a whole file on CASI, correct?
- 5 A. I do not, no, sir; the Advanced Technology Program does.
- 6 Q. You are part of NIST though, are you not?
- 7 A. I am part of NIST, that is correct.
- 8 Q. And the Advanced Technology Program is a program that is
- 9 supervised by NIST.
- 10 A. That is correct, but I'm no longer with that program.
- 11 Q. But there are a number of documents, are you telling us,
- 12 related to the CASI involvement with the NIST ATP project
- 13 that --
- 14 A. There is the project file, correct.
- 15 Q. And how voluminous would you say that project file is?
- 16 A. In the Advanced Technology Program secure site where its
- documents are held, it's probably two feet long. The official
- 18 file resides in our grants office though, and I don't know how
- 19 large theirs is.
- Q. You have never seen that?
- 21 A. I have seen it. I have no clue how large it is.
- 22 Q. Have you seen it in preparation for your testimony here on
- 23 this trial?
- 24 A. Have I seen any preparation by whom?
- 25 O. No. Have you seen that file?

8637KAR3 Lide - cross

- 1 A. The grants file?
- 2 Q. Right.
- 3 A. No, sir. No, sir.
- 4 Q. Now you prepared this memorandum on June 27, 2006, correct?
- 5 A. Correct.
- 6 Q. And did you go back to your secure file to refresh your
- 7 recollection as to events that occurred?
- 8 MR. KWOK: Objection. Asked and answered.
- 9 THE COURT: Objection overruled. I will allow the
- 10 question. That's not really a proper objection. It can be
- 11 if --
- 12 A. What's documented in the document he has, I did not need to
- 13 go back to the complete file. They were highlighted in my
- 14 memory.
- 15 Q. And did you review this document before you came here to
- 16 testify?
- 17 A. A while ago, yes, sir.
- 18 Q. When you say a while ago, how long ago was that?
- 19 A. Two months.
- 20 Q. And was that when you met -- withdrawn.
- 21 Did you meet the members of the prosecution team in
- 22 this -- when did you meet the members of the prosecution team
- for the first time in this case?
- 24 A. About two months ago, if I remember correctly.
- 25 Q. And that was back in April 21, 2008?

8637KAR3 Lide - cross

- 1 A. Approximately.
- 2 Q. And between the time that you submitted the memorandum to
- 3 the agent in 2006 until 2008, did you have any contact with
- 4 anybody in law enforcement related to this case?
- 5 A. Not that I can remember.
- 6 Q. Do you make notes of your meetings with Dr. Karron? Did
- 7 you make any notes at the time that you met with Dr. Karron?
- 8 A. Formal meetings such as site visits, there are some notes.
- 9 Informal meetings in the NIST cafeteria or phone calls are
- 10 documented basically just by e-mails.
- 11 Q. And do you have with you the notations of any notes of the
- 12 formal meetings that you had? Are you talking about the two
- 13 site visits?
- 14 A. Correct.
- 15 Q. And you are also talking about the original meeting with
- 16 the slide presentation?
- 17 A. Right. But the slide presentation is our notes for that.
- 18 Q. All right. So your slide presentation and the notes for
- 19 the first meeting with Dr. Karron, correct?
- 20 A. Correct.
- Q. You are familiar with Mark Stanley, are you not?
- 22 A. Yes, I am.
- 23 Q. And who is Mark Stanley?
- 24 A. He is currently the director of the Advanced Technology
- 25 Program.

8637KAR3 Lide - cross

1 Q. And back in 2001 was he in fact the director of the

- 2 Advanced Technology Program, ATP?
- 3 A. He was the acting director.
- 4 Q. All right. And you would have seminars, would you not,
- 5 with respect to grant applicants?
- 6 A. We had what we call proposers conferences for people who
- 7 wanted to apply.
- 8 Q. And do you know a Linda Beth Shelling?
- 9 A. Yes.
- 10 Q. Who is she?
- 11 A. She is currently -- well, they just reorganized. She is a
- division director in the Advanced Technology Program.
- 13 Q. And back in 2000, 2001, what was her title?
- 14 A. To the best of my knowledge, she was a division director
- 15 then of what was called the biology and chemistry division. I
- 16 forget the exact title of it.
- 17 Q. And do you know a person by the name of Stephanie Ship?
- 18 A. Yes, I do.
- 19 Q. And who is Stephanie ship?
- 20 A. She is on a leave of absence. Her position of record is
- 21 the director of the economic assessment office in the Advanced
- 22 Technology Program.
- 23 Q. And what was her position back in 2000/2001?
- 24 A. That's what it was then.
- 25 O. And what about Barbara Landis?

8637KAR3 Lide - cross

- 1 A. Barbara Lambis?
- Q. Lambis, correct. Thank you.
- 3 A. She is like a special assistant to the director and a
- 4 liaison to the grants office.
- 5 Q. And is it fair to say that these people, Mark Stanley and
- 6 the three ladies that I mentioned, they would make
- 7 presentations to potential grant applications?
- 8 A. Certainly. They work as are our professional staff did.
- 9 We wanted to get the word out as broadly as possible, so all
- 10 professional staff were encouraged to make such presentations.
- 11 Q. And did you ever participate in such a presentation?
- 12 A. I did.
- 13 Q. Do you know whether or not Dr. Karron attended a
- 14 participation of that kind?
- 15 THE COURT: What date? Attended what? I'm not quite
- 16 sure.
- 17 Q. A conference with Mark Stanley and other directors of the
- 18 ATP program in 2001.
- 19 A. We keep attendance -- we ask for registration only to see
- 20 the size room we need, and we don't keep attendance lists, so I
- 21 could not be sure of that.
- 22 Q. Is it fair to say that in 2001 your agency distributed
- about \$60 million in new awards?
- 24 A. That's the -- I don't know exactly, but that is the usual
- amount that we distributed, so, yes, sir, I think that's a fair SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR3 Lide - cross

- 1 assessment.
- 2 Q. And what is the maximum award that is permitted by ATP?
- 3 A. For a single company, it is \$2 million over three years,
- 4 and thus many companies divide it equally, you know, roughly 6
- or \$700,000 a year, but they could just as well apply for one
- 6 million a year for two years.
- 7 Q. And it's fair to say that a number of the companies that
- 8 apply are small companies?
- 9 A. All sized companies apply. A good percentage of awards do
- 10 go to small companies.
- 11 Q. Now, is CASI considered a small company?
- 12 A. Yes.
- 13 Q. And what would be -- how would you classify a small company
- 14 from a larger company?
- 15 A. Well, we actually use the general practice of 500 employees
- or less.
- 17 Q. And you do give grants to large companies, correct?
- 18 A. Yes. I'd like to clarify that the Advanced Technology
- 19 Program does not today exist, so to be actually accurate it
- 20 would be it did give grants to large companies.
- 21 Q. Does it exist with a different name?
- 22 A. No. There is a new program there, but it is not the same
- as the Advanced Technology Program just with a different name.
- 24 Q. The administration, the present administration is taking
- 25 away scientific research in different areas, correct?

8637KAR3 Lide - cross

- 1 A. Who is, sir?
- 2 Q. The current administration of the government.
- 3 A. Oh.
- 4 MR. KWOK: Objection. Relevance.
- 5 THE COURT: Objection sustained.
- 6 Q. What percentage of people who receive grants are successful
- 7 in developing technology?
- 8 A. A very large percentage. I would give an estimate of -- do
- 9 I need to give an estimate? If you would like one, I would say
- 10 80 to 90 percent.
- 11 Q. Would you agree or disagree with Mark Stanley if he said
- 12 there were 40 percent?
- 13 A. I think it's a definition of what is a successful
- 14 technology. My answer was if the technology research is
- 15 successful. Mark is speaking for the program. The program
- 16 does not think of the project as a success unless not only the
- 17 technology is developed but it also reaches product in the
- 18 marketplace. I think that's the discrepancy in our
- 19 percentages.
- 20 Q. And is this all government money that goes into these
- 21 grants?
- 22 A. Except for the cost share requirements.
- 23 Q. Well, isn't it a fact that private industry contributes to
- 24 the fund?
- 25 A. And that's why I said except for cost share, yes, sir.

8637KAR3 Lide - cross

1 Q. Cost share is a figure given by a recipient like Dr.

- 2 Karron. He had a cost share portion, correct?
- 3 A. Um-hum.
- 4 Q. Of about 5 percent.
- 5 A. Correct.
- 6 Q. Right?
- 7 A. Yes.
- 8 Q. But isn't it a fact that industry itself donates to this
- 9 ATP project?
- 10 A. Industry must contribute to the project, as Dr. Karron
- 11 contributed independent costs and cost share. But the pot of
- 12 money, the 60 million that we give away, is totally government
- 13 funds.
- 14 Q. And the money that you give away, where do you put the
- 15 \$800,000 that Dr. Karron was entitled to the first year of the
- 16 grant?
- 17 A. In a bank account against which Dr. Karron can draw through
- 18 this program described as ASAP.
- 19 Q. So that once the grant is approved, \$800,000 is deposited
- into an account, correct?
- 21 A. Correct.
- 22 Q. And this grant was approved October 1, 2001, correct?
- 23 A. Correct.
- Q. Between October 1, 2001, when was money actually available
- 25 to CASI?

8637KAR3 Lide - cross

1 A. I don't recall. I thought the first draw-down was within

- 2 the first month or two.
- 3 O. And the costs that are acquired by in this case CASI before
- 4 the money is available is borne by who?
- 5 A. It depends on whether the start date of the project had
- 6 occurred or not. If the start date of the project was October
- 7 4, whatever the date on that financial award assistance, then
- 8 no money of the government could be spent before that date.
- 9 Q. In this case the start date in fact was October 1, was it
- 10 not?
- 11 THE COURT: Do you have to look at an exhibit? The
- 12 award is exhibit number --
- 13 THE WITNESS: It was signed by Dr. CASI on October 5.
- 14 THE COURT: By doctor who?
- THE WITNESS: Sorry, by Dr. Karron. I'm sorry. It's
- 16 Exhibit 12.
- 17 THE COURT: Exhibit 12. And that's the start date?
- 18 THE WITNESS: Actually, no. I guess if you look at
- 19 the award period near the top it says the award period is
- 20 October 1st.
- 21 Q. It's fair to say that as soon as the money became
- 22 available, within a month or two months, Dr. Karron could have
- 23 withdrawn \$800,000.
- 24 A. As long as it was -- well, one must account for the budget
- 25 month by month.

8637KAR3 Lide - cross

- 1 Q. Well, but in the first month if he took down \$800,000, at
- 2 the end of the month he would account that he took \$800,000,
- 3 correct?
- 4 A. He would have to account how he spent that \$800 in that
- 5 month.
- 6 THE COURT: 800,000.
- 7 THE WITNESS: I'm sorry. Yes, 800,000. My checkbook
- 8 is a little different.
- 9 Q. But the bottom line is that under this, he didn't need any
- 10 cosignature from anybody at ATP, correct? Nobody had to
- 11 approve any monies before what you call draw-downs, is that
- 12 right? Is that the terminology you use?
- 13 A. My grants partner would know that better than I, but that's
- 14 a fair term.
- 15 THE COURT: What's the answer to the question?
- MR. RUBINSTEIN: Pardon.
- 17 THE COURT: What was the question?
- 18 MR. RUBINSTEIN: The question is that there are no
- restrictions on how much of the \$800,000.
- 20 THE COURT: That was your statement, but I didn't
- 21 understand that to be your question.
- 22 Q. Are there any -- at the time a person, for instance Dr.
- 23 Karron or somebody working at CASI -- once the funds are
- available, the \$800,000 for year one, October 1, 2001 to
- 25 September 30, 2002, is available on day one that the money is SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR3 Lide - cross

1 deposited. It's not deposited in increments, correct?

- 2 A. That is correct.
- 3 O. And is there any restriction on who working for CASI has
- 4 the authority to have monies transferred from this account to
- 5 the CASI corporation?
- 6 A. It has to be a duly recognized officer of that corporation.
- 7 THE COURT: Can they take the whole \$800,000 in the
- 8 first month? That's what he is asking.
- 9 THE WITNESS: It's highly unusual. If they take it in
- 10 the first month, at the end of the first month they have to
- 11 justify how much of that was spent on ATP, and anything that
- 12 was not spent on ATP reverts -- has to be returned to that bank
- 13 account.
- 14 So, I find it hard to believe -- you know, if you look
- 15 at a year where X people are getting salaries month by month, I
- 16 find it hard to believe that they could get their whole yearly
- 17 salary in the first month.
- 18 Q. Now, isn't it a fact that Dr. Karron was advised that this
- 19 grant was approved prior to the October date that you told us
- 20 in Exhibit 12?
- 21 A. I would have no knowledge of that. In fact, it's against
- 22 ATP policy to advise that before the actual award announcement
- is made to the public.
- 24 Q. So you have no knowledge whether or not Dr. Karron was
- aware that he received a grant prior to October of 2001. Is

 SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR3 Lide - cross

- 1 that your testimony?
- 2 A. Well, Marilyn Goldstein's document -- which again is
- 3 Exhibit 12, if I remember correctly -- is dated 9/29/01, and
- 4 once she signs it, they're Fed Exed out. So it could be that
- 5 he received it on 9/30. But as a project manager, that's not
- 6 in my area or was not in my area of responsibility.
- 7 Q. Isn't it a fact, ma'am, that pre-contract costs are
- 8 permitted under the grant?
- 9 A. No.
- 10 Q. Are you familiar with 48 CFR? Are you familiar with that?
- 11 A. No, I'm not.
- 12 Q. You're familiar, are you not, with 15 --
- 13 THE COURT: CFR --
- 14 MR. RUBINSTEIN: Sorry, Judge. CFR 31.205/32.
- 15 A. Well, I'm certainly familiar with CFR. I have no clue what
- 16 that particular reference is. I do know though that ATP does
- 17 not allow any project costs before the start of the project.
- 18 Q. Do you know whether or not the CFR, 48 CFR 31.205/32, is
- 19 referenced in any of the exhibits that you have testified to
- 20 here today?
- 21 A. Could you read that number again, please.
- 22 O. 48 CFR 31.
- 23 THE COURT: 205/32.
- 24 MR. RUBINSTEIN: 205/32.
- 25 A. 48 CFR is part of -- you know, it's referenced in Exhibit SOUTHERN DISTRICT REPORTERS, P.C.

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8637KAR3 Lide - cross

- 1 12.
- Q. And the grant recipient is supposed to be responsible for
- 3 knowing what's in 48 CFR 31.205/32, is that correct?
- 4 THE COURT: She didn't say that section. It was only
- 5 that 48 CFR section 31 is referenced in the financial
- 6 assistance award Exhibit 12, Government Exhibit 12.
- 7 THE WITNESS: Right. And these are documents that the
- 8 recipient has as reference during the course of the award.
- 9 Q. And do you physically give the recipient -- you said you
- 10 give them a packet. Do you include in that packet something
- 11 like -- you showed us before I think on Exhibit 3, 15 CFR 14.4.
- 12 THE COURT: I don't know what you're referring to,
- 13 Mr. Rubinstein.
- MR. RUBINSTEIN: Well, I want to know if they give the
- 15 recipient --
- 16 THE COURT: 15 CFR 24 is not one of the items that is
- 17 marked on Government Exhibit 12.
- 18 MR. RUBINSTEIN: I didn't say it was, Judge. I said
- 19 that it's mentioned. It may not be in the Power Point. You
- 20 give them a slide.
- 21 THE COURT: This isn't a Power Point. This is the
- 22 financial assistance award.
- MR. RUBINSTEIN: Your Honor --
- Q. What document are you looking at?
- 25 A. I have Government Exhibit 12, and it lists 48 CFR part 31, SOUTHERN DISTRICT REPORTERS, P.C.

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1 and, yes, that document is part of the award package which the

- 2 recipient receives. It says here, "The recipient agrees to
- 3 comply with the award provisions checked below and attached."
- 4 THE COURT: There is also another CFR section, isn't
- 5 there? CFR --
- 6 THE WITNESS: There are several CFRs.
- 7 THE COURT: 514?
- 8 THE WITNESS: Correct.
- 9 THE COURT: That's also attached?
- 10 THE WITNESS: No, it just says 48 CFR part 31.
- 11 THE COURT: But I'm on the fourth item down.
- 12 THE WITNESS: That's 15 CFR. Wait, one, two -- yeah.
- 13 THE COURT: 14?
- 14 THE WITNESS: Yes.
- THE COURT: And that's also sent.
- 16 THE WITNESS: Yes, everything checked here is part of
- 17 that award package.
- 18 Q. In other words, on Exhibit 12, you have 15 CFR part 14,
- 19 correct?
- 20 A. Correct.
- Q. And that is a document that has about 80 pages, correct?
- 22 A. Probably, yes.
- 23 Q. And you have CFR -- 48 CFR part 31, contract cost
- 24 principles and procedures, and that's a document that's about
- 25 200 pages long.

8637KAR3 Lide - cross

- 1 THE COURT: It's the Code of Federal Regulations.
- Q. Is that correct, ma'am?
- 3 A. Yes, sir.
- 4 Q. And you also provide other materials to a recipient,
- 5 correct?
- 6 A. All of the items checked on Exhibit 12 are part of the
- 7 award package.
- 8 Q. And that is provided to the recipient at this first meeting
- 9 you told us about?
- 10 A. No, sir, that's Fed Exed to the recipient with the actual
- 11 award that the recipient signs several copies of and sends some
- 12 back to the government.
- 13 O. And could you describe to the jury in volume how large this
- 14 package would be that the recipient would receive?
- 15 A. It's not sent from my office, so I don't know. There are
- 16 reference documents to be read as needed.
- 17 Q. And is it fair to say that the concept of ATP is that no
- 18 good project should go unfunded? That's your mantra?
- 19 A. No, sadly we didn't have enough money to follow that
- 20 mantra.
- 21 Q. Well, should a project that you funded, should it go
- 22 unfinished?
- 23 THE COURT: Sorry, I don't understand the question.
- MR. RUBINSTEIN: I will withdraw it, Judge.
- Q. Now, if the grantee is successful and develops a product SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 that's used in the marketplace, is it fair to say that the
- 2 grantee is the one who derives the financial benefit of that
- 3 product?
- 4 A. One hopes that the grantee does and also the United States
- 5 as a nation. We hope that they are also an economic benefit to
- 6 our nation.
- 7 Q. Right. But nothing to replace the \$800,000 or the \$2
- 8 million that they got as start-up money, correct?
- 9 A. The government does not get any money back, no.
- 10 THE COURT: They're not a partner.
- 11 THE WITNESS: Well, we're a partner in that we give
- 12 them this funding and we are very pleased when they are
- 13 successful. That is our goal, to have successful --
- 14 THE COURT: But there is no financial benefit.
- THE WITNESS: That's correct, sir, right, just
- 16 bragging rights.
- 17 Q. Now, the special condition that was involved in this
- 18 grant -- I think you said it was in -- was that in Exhibit 12
- 19 that they referred to a special condition?
- 20 A. It might have been 13, I believe. Yeah, special award
- 21 conditions are Government Exhibit 13.
- Q. Now, you were a grant administrator?
- 23 A. No, I'm not, sir. I am a technical person.
- Q. So, your job is to advise the grantee on what?
- 25 A. Our job is to follow the technical progress and the

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1 commercialization progress, to advise as needed, and to bring

- 2 in the grants specialist also as needed. We are liaisons to
- 3 the grants office.
- 4 Q. And here there was -- are you involved in determining who
- 5 is the recipient of the grant?
- 6 A. Yes, I actually ran the competition. But I obviously did
- 7 not review every proposal myself.
- 8 Q. But in this instance -- CASI was the grant recipient,
- 9 correct?
- 10 A. CASI is a grant recipient in the 2001 competition, correct.
- 11 Q. And that is CASI, Inc., I-N-C.
- 12 A. Yes.
- 13 Q. And Dr. Karron is a principal of that corporation, correct?
- 14 A. He actually signed the proposal I believe as chief
- 15 technical officer, and other times he signed it as president.
- 16 Q. And the only special condition was that CASI cofund for the
- 17 5 percent, correct?
- 18 THE COURT: Three. Is it 5 percent?
- 19 THE WITNESS: It's 3.61 in the special award
- 20 condition.
- 21 MR. RUBINSTEIN: OK. I was rounding it off, Judge,
- but 3.61 is fine with me.
- 23 Q. And the number that you gave before of 50 some odd thousand
- 24 dollars, that was for the first 21 months of the grant when the
- 25 grant was suspended, correct?

8637KAR3 Lide - cross

1 A. I don't remember saying 50 some odd thousand dollars.

- 2 THE COURT: I don't think there was any such
- 3 testimony, Mr. Rubinstein.
- 4 MR. RUBINSTEIN: I'm sorry.
- 5 O. In fact --
- 6 THE COURT: The jury's recollection will govern, but
- 7 that's my recollection.
- 8 Q. And in Exhibit 26 it gives a recipient share of the cost in
- 9 that Exhibit of \$67,000 even.
- 10 THE COURT: You are referring to the --
- 11 MR. RUBINSTEIN: Government Exhibit 26, your Honor.
- 12 THE COURT: All right. This is the proposal for the
- 13 second year?
- 14 MR. RUBINSTEIN: No, your Honor. This is the -- I'm
- 15 sorry. I must have given you the wrong number.
- 16 THE WITNESS: This shows the first and second year
- 17 together.
- 18 MR. RUBINSTEIN: I'm sorry, your Honor.
- 19 Q. Is it fair to say, Ms. Lide, that the grant was suspended
- 20 for not contributing the cofunding 3.61?
- 21 A. That is the reason for the suspension.
- 22 Q. And are you aware that after the suspension on June 27,
- 23 2003, that Dr. Karron deposited \$60,000 in the CASI account?
- 24 A. I saw documentation of that only in the ATP file. I was
- 25 not aware of it at the time. At that point the negotiation was SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 between CASI and our grants office.
- 2 Q. So you were out of the loop basically?
- 3 A. I was a technical project manager, and Dr. Karron had to
- 4 satisfy the requirements from our grants office, because all
- 5 official documentation comes from them.
- 6 Q. Now, there are other special conditions that can be placed
- 7 on a grantee, is that correct?
- 8 A. Yes.
- 9 Q. As a matter of fact, there are conditions. Sometimes you
- 10 have companies that aren't financially sound or financially
- 11 stable to qualify for grants, correct?
- 12 A. Could you please define financially sound.
- 13 Q. In the CASI grant there was to be an audit at the end of
- 14 the first year.
- 15 A. That's true of all three-year single applicants.
- 16 Q. Isn't it a fact that under the rules of ATP, that you could
- 17 have with a single applicant grant more -- you could have an
- 18 earlier audit than at the end of the year?
- 19 THE COURT: The first year.
- 20 MR. RUBINSTEIN: First year.
- 21 A. If you requested it.
- 22 Q. Is the financial responsibility of the prospective grantee
- 23 something that's looked at in determining whether or not to
- 24 grant an award?
- 25 A. The organizational structure and the ability to sustain the SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 award is looked at, yes.
- Q. How about the individual, the individuals involved in the
- 3 grantees, as to their financial management capabilities?
- 4 A. No, we look at the corporation. We do not look at the
- 5 individuals. We do clear the individuals for other things like
- 6 criminal offenses and disbarment, things like that, but we do
- 7 not, to the best of my knowledge -- I have never looked at an
- 8 individual's records.
- 9 Q. How about whether or not they pay their income tax, do you
- 10 check that?
- 11 A. No, unless it shows up on one of the government clearances
- 12 that are done routinely.
- 13 Q. That are done with what?
- 14 A. There are certain routine forms that principals of a
- 15 company fill out, and then they go through routine clearances
- 16 downtown at Department of Commerce, Department of Justice, so
- 17 unless they look at income tax. But ATP certainly does not
- 18 look at an individual's income tax.
- 19 Q. So, in other words, before a person gets a grant there are
- 20 other organizations in government that check the person or the
- 21 company in some way to find out if they're felons or whatever.
- 22 A. There are clearances, that is correct.
- Q. So CASI received a clearance, correct?
- 24 A. CASI received a grant, so clearly the clearance went
- 25 through.

8637KAR3 Lide - cross

- 1 Q. And what agent -- do agencies have to submit a document
- 2 with ATP that they have cleared CASI to receive \$800,000 in one
- 3 year?
- 4 A. Do agencies --
- 5 THE COURT: Objection to the form of the question,
- 6 because there is more than one conclusion.
- 7 Q. Let me ask you this. You are familiar with the office of
- 8 the inspector general of the Department of Commerce, correct?
- 9 A. Yes.
- 10 Q. And, as a matter of fact, the special agent that you
- 11 pointed out who was here before, she is with that organization,
- 12 correct?
- 13 A. Yes.
- 14 Q. And does the inspector general, do they investigate on
- 15 behalf of ATP the qualifications of a grant recipient?
- 16 A. To the best --
- 17 THE COURT: If you know.
- 18 A. Someone you mentioned earlier handled that part of the
- 19 process, Ms. Barta Lambis, and that was not part of my
- 20 responsibility. I do know that there are clearances.
- Q. And it's fair to say that these funds, this \$800,000, is
- 22 not put in escrow, correct?
- 23 THE COURT: Asked and answered. She told you where it
- 24 was put.
- Q. And when you withdraw the funds, is there any requirement SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR3 Lide - cross

1 to segregate these ATP funds from any other funds that the

- 2 company might have?
- 3 A. Yes, one has to have an accounting system that accounts for
- 4 what goes to the ATP project.
- 5 Q. A system, correct?
- 6 A. An accounting system.
- 7 Q. But not a separate bank account for these federal funds,
- 8 correct?
- 9 A. As long as one can account for the spending of the funds
- 10 from that account to the CASI project.
- 11 Q. Now, did there come a time that you had --
- 12 By the way, is the grantee, in this case CASI, are
- 13 they permitted to get additional funding sources outside of ATP
- 14 to develop their project?
- 15 A. That's encouraged.
- 16 Q. And in fact in this case with CASI they were exploring,
- 17 were they not, getting funds from New York state?
- 18 A. Correct.
- 19 Q. And in fact you learned they were unable to get funds
- 20 because this grant started October 1, 2001 and 9/11 happened
- 21 2001.
- 22 A. It was not my understanding that that was the reason. In
- 23 fact, it was my understanding that they were pursuing other
- 24 sources of funds. Later in the course of the project, some of
- 25 the quarterly reports actually had what they submitted to other SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR3 Lide - cross

- 1 funding agencies.
- 2 THE COURT: It's your understanding in this area,
- 3 based on reports from CASI.
- 4 THE WITNESS: And conversations, yes, sir.
- 5 THE COURT: But nothing else.
- 6 THE WITNESS: No, sir.
- 7 THE COURT: So, you don't have any independent
- 8 knowledge.
- 9 THE WITNESS: No, sir.
- 10 THE COURT: You are just repeating what they told you.
- 11 THE WITNESS: What they told me verbally and what we
- 12 got in the quarterly reports.
- 13 THE COURT: From them.
- 14 THE WITNESS: Correct.
- 15 Q. Do you recall being a recipient of an e-mail, Government
- 16 Exhibit 3501-DDDDD?
- 17 THE COURT: 3501 what?
- MR. RUBINSTEIN: DDDDD.
- THE COURT: D, as in dog?
- MR. RUBINSTEIN: Yes, your Honor.
- THE WITNESS: Do I have that?
- 22 THE COURT: Do you want to show it to the witness.
- 23 Q. I show you this e-mail, it's actually from you. Do you
- 24 want to review it and see if it refreshes your recollection?
- 25 A. Sure.

8637KAR3 Lide - cross

- 1 THE COURT: Is that DDD?
- 2 MR. RUBINSTEIN: Five Ds, your Honor.
- 3 THE COURT: Five Ds, as in dog.
- 4 MR. RUBINSTEIN: 3501 five Ds.
- 5 Your Honor, the government hasn't provided these
- 6 documents to the jury, your Honor.
- 7 THE COURT: I understand.
- 8 MR. RUBINSTEIN: I know, but the jury is looking.
- 9 THE COURT: You won't have it there in your books.
- 10 What's your question on the document?
- 11 Q. Yes. Does that refresh your recollection of discussions
- 12 about New York state, attempting to get New York state funding?
- 13 A. Even without that e-mail, I acknowledge that CASI was
- 14 trying to get other funding.
- 15 Q. And you said something about that they had indicated they
- 16 wanted to open an office in downtown Manhattan, correct?
- 17 A. That's what I recall Dr. Karron telling us, yes.
- 18 Q. And in fact you are aware that it was virtually impossible
- 19 to find offices in downtown Manhattan after 9/11/01, correct?
- 20 A. I honestly thought -- I recall some discussion on perhaps
- 21 rent would be cheaper and it would be easier, and there were
- 22 also other offices being considered.
- Q. And one of them was at CUNY.
- 24 A. Correct.
- Q. And in fact did you learn that CUNY wanted \$1 million in SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR3 Lide - cross

1 rent to run the CASI project out of their facility?

- 2 A. I did not know that.
- 3 Q. Did you inquire of Dr. Karron at any time what happened to
- 4 the facility at CUNY?
- 5 A. Actually the quarterly reports reported that they were
- 6 still looking for space, and although it hadn't come through
- 7 yet it was still a possibility, and that documentation
- 8 indicated to us that he was still pursuing other lab space.
- 9 Q. And you came in contact with this Mr. Orthwein, correct?
- 10 A. Correct.
- 11 Q. You met him personally?
- 12 A. Correct.
- 13 Q. And you had a number of telephone calls with him, correct?
- 14 A. Correct.
- 15 (Continued on next page)

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863ZKAR4 Lide - cross

- 1 Q. And could you estimate how often he would call you on
- 2 behalf of CASI?
- 3 A. I could not estimate. Many of the communications were from
- 4 Dr. Karron, himself.
- 5 Q. Now, you say you went to the 300 East 33rd Street where
- 6 CASI was located, correct?
- 7 A. Correct.
- 8 Q. Could you, when you went there, on your -- you went there
- 9 on your first site visit, right?
- 10 A. We went there two site visits, correct.
- 11 Q. And your first site visit was in 2001?
- 12 A. The first -- both site visits were in 2002, May and
- 13 October.
- 14 Q. And when you went on this site visit, could you describe to
- the jury what this facility looked like?
- 16 A. It looked like someone's personal abode with a living room
- 17 with a large number of computers.
- 18 Q. Was there anything other than computers in the living room?
- 19 A. I remember, you know, facility like a screen to show a
- 20 power point presentation. The overwhelming impression was a
- 21 lot of computers.
- 22 Q. And, in fact, you told us that it was very hot in there?
- 23 A. No, I didn't think it was hot at all. It was brought to
- 24 our attention that because of the computers, Dr. Karron felt
- 25 ATP should pay for additional electricity for air conditioning.

863ZKAR4 Lide - cross

1 Q. And that was something that was going to be negotiated,

- 2 correct?
- 3 A. No. We said that it's normally not covered. We didn't
- 4 think it would be covered. He could apply and see what the
- 5 grants office said, but it was not an item that we expected to
- 6 negotiate, because we've never seen it done before.
- 7 Q. Well, are you aware that CASI was asked to submit their
- 8 prior year bills on electricity to their current year's usage?
- 9 A. No, I was not aware. But any approval for that would have
- 10 come from the grants office. I was not part of that.
- 11 Q. You're not part --
- 12 THE COURT: I think I should instruct the jury that
- 13 it's the witness' answers that are the evidence before you.
- 14 It's not the lawyers' questions. So you're not to draw any
- 15 conclusions from the fact that the lawyer asked the question.
- 16 It's what the witness answers that is the evidence before you.
- 17 Q. Well, there were -- did you ever hear of the term, site
- 18 preparation?
- 19 A. I've not heard that term. I can imagine what the
- 20 definition would be.
- 21 Q. Isn't it a fact that a grantee is permitted to to prepare
- 22 the facility where the project is going to be run to
- 23 accommodate the equipment, if you need equipment in the grants;
- 24 is that so?
- 25 A. The grantee certainly has authority to do whatever he or SOUTHERN DISTRICT REPORTERS, P.C.

863ZKAR4 Lide - cross

1 she wants with the space at the laboratory. It's a question of

- who pays for that, and ATP does not pay for major renovations.
- 3 O. Well, Exhibit 1 that's actually in the binders, and page
- 4 six of that exhibit, do you recall testifying about that on
- 5 direct examination?
- 6 A. Correct.
- 7 Q. And you testified that the project doesn't pay for
- 8 construction costs, correct?
- 9 A. Correct. It says here, those are unallowable costs to ATP.
- 10 Q. Well, how about the next line, does it say, reading from
- 11 Government's one in evidence; however, construction of
- 12 experimental research and development facilities to be located
- 13 within a new or existing building are allowable, provided the
- 14 equipment or facilities are essential for carrying out the
- 15 proposed scientific and technical project and are approved by
- 16 NIST grants offices?
- 17 THE COURT: You asked her if it says that?
- 18 Q. Is that what that document says, in whole?
- 19 A. Yes, it does. However, that was not proposed in the
- 20 proposal. I have managed over 50 ATP projects over 15 years
- 21 and we have never paid for that.
- 22 MR. RUBINSTEIN: I move that be stricken as not
- 23 responsive.
- 24 THE COURT: Well, the later the part of it, the last
- the jury is instructed to disregard the part about the 15

863ZKAR4 Lide - cross

1 years. But the witness testifying that not this language is

- 2 not in the grant proposal is allowed.
- 3 O. The proposal, itself, in other words when you met with Dr.
- 4 Karron, did you tell him that, you know, in 15 years we've
- 5 never once allowed any kind of site preparation costs; did you
- 6 ever say that, yes or no?
- 7 A. We said it was highly unlikely that it would be approved.
- 8 Q. Your department is not the one that approves or
- 9 disapproves, correct?
- 10 A. My department recommends approval or disapproval.
- 11 Q. And there is an appeal process?
- 12 A. It's no appeal process. The decision is made in our grants
- office, so we can recommend, but they make the decision.
- 14 Q. And, in fact, could you describe the size of these
- 15 computers that were in this office of CASI?
- 16 A. There were several silicon graphic servers and some work
- 17 stations. Technology has changed.
- 18 The other point I'd like to make is the request for
- 19 these were not in the original budget, so he would've needed an
- 20 approval of a different budget anyway to use the money for
- 21 these items.
- 22 Q. Fine. But you can get budget revisions, right?
- 23 A. You can get budget revisions.
- Q. And it's a question of whether or not somebody says that
- 25 this is an appropriate expense or not an appropriate expense,

863ZKAR4 Lide - cross

- 1 correct?
- 2 A. He was advised that if he wanted to suggest it, we would
- 3 certainly see what the grants office said.
- 4 THE COURT: What they said or write?
- 5 THE WITNESS: I'm sorry, what they wrote, yes, sir,
- 6 had to be in writing -- sorry. The decision the grants office
- 7 made would be appropriate way to say that.
- 8 Q. Isn't it a fact that in November of 2001, there were
- 9 requests, oral requests for budget revisions by Dr. Karron?
- 10 A. And, indeed, a budget revision was approved in December of
- 11 '01. That's one of the government exhibits, and nothing for
- 12 those expenses occurred in that budget revision.
- 13 THE COURT: Submitted by?
- 14 THE WITNESS: CASI submitted a new budget that was
- 15 approved in December of 2001, and there were no changes in the
- 16 budget that would reflect the desire for these renovations.
- 17 Q. What kind of renovations were they?
- 18 A. I would assume we are talking about the air conditioning.
- 19 Q. And the air conditioning, Dr. Karron advised you, was
- 20 necessary because the computers which were running, correct?
- 21 A. Yes, sir.
- 22 Q. And in fact these, you learned that these computers were
- 23 running virtually 24 hours a day?
- 24 A. But my point is if he wanted that renovation, it should
- 25 have been requested in a revised budget, if he wanted to spend SOUTHERN DISTRICT REPORTERS, P.C.

863ZKAR4 Lide - cross

- 1 the Government's money for it.
- Q. Should have been, correct?
- 3 A. Correct.
- 4 Q. Now, they did ask for a revised budget as to employees, did
- 5 they not, in November of 2001?
- THE COURT: What's the question?
- 7 Q. To reduce part of the revision request was to reduce the
- 8 salaries for employees?
- 9 A. One of the -- there was a minor reduction in -- I'd have to
- 10 look up that budget if we're going to do that, please.
- 11 THE COURT: Exhibit what?
- 12 THE WITNESS: It's one of the amendments, sir.
- 13 THE COURT: What date are we talking about?
- 14 THE WITNESS: Yeah, which exhibit is --
- 15 THE COURT: Mr. Rubinstein, what date are you talking
- 16 about?
- 17 THE WITNESS: It's, it's amendments one or two, I
- 18 think.
- 19 THE COURT: What exhibit are you talking about, Mr.
- 20 Rubinstein, so we can get along with this?
- 21 MR. RUBINSTEIN: I believe it is --
- THE WITNESS: Let's see, it's going to be 22.
- MR. RUBINSTEIN: Thank you.
- THE WITNESS: Certainly.
- THE COURT: 22?

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1 THE WITNESS: Yes, sir. Exhibit 22. And the salaries

- were reduced from 375 to 325. However, that was offset by the
- 3 increase in subcontractors from 200 to 250.
- 4 Q. When they reduced the salaries, they also reduced the
- 5 fringe benefits, did they not, in the revised budget?
- 6 A. Correct, and they upped the travel and the materials. The
- 7 net change in the budget was zero.
- 8 Q. The concept of ATP is, don't spend more than the 800,000,
- 9 correct?
- 10 A. You cannot spend more than 800,000 during the first year of
- 11 the project or however much you've budgeted, correct.
- 12 Q. And when CASI submitted their budget, did anybody from ATP
- 13 question any line in the budget?
- 14 A. There was -- there is a source of valuation board which
- 15 consists of approximately 15 high level individuals who look at
- 16 that proposal, including the budget. And, indeed, if there are
- any questions, those are either answered at what's called an
- 18 oral review, or there are documents that go back and forth with
- 19 questions and answers. But the final document is the one that
- is approved in the award itself.
- 21 THE COURT: Well, looking at exhibit 26, Ms. Lide.
- THE WITNESS: Yes, sir. 26?
- 23 THE COURT: Are the explanations of the changes in the
- 24 budget included in the second page of the budget request?
- 25 THE WITNESS: I'm afraid I misplaced 26.

863ZKAR4 Lide - cross

1 THE COURT: I'm sorry, did I say 26? 22.

- 2 THE WITNESS: 22? There is --
- 3 THE COURT: Is the one you say is the --
- 4 THE WITNESS: Yes, sir. And in my exhibit I -- there
- 5 is an e-mail where the changes --
- 6 THE COURT: No, I don't want something -- oh, it's a
- 7 part of exhibit --
- 8 THE WITNESS: Yes, yes.
- 9 THE COURT: The second page?
- THE WITNESS: Oh, it's the one, two, three, the fourth
- 11 page of exhibit 22 is the explanation and rational for the
- 12 changes.
- 13 THE COURT: And then there's one item that's called
- 14 contracting costs.
- THE WITNESS: Correct, so --
- 16 THE COURT: What is that for?
- 17 THE WITNESS: Basically, they were changing the status
- of at least one employee to a consultant instead of an
- 19 employee.
- 20 THE COURT: But who is that consultant?
- 21 THE WITNESS: The one I'm reading here now is
- 22 Professor George Wolberg.
- 23 THE COURT: That's not air conditioning, is that
- 24 right?
- 25 THE WITNESS: That is correct, it is not. There's no SOUTHERN DISTRICT REPORTERS, P.C.

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1 change in this budget that would anyway reflect the request for

- paying for air conditioning.
- 3 THE COURT: All right.
- 4 Q. By the way, in Exhibit 1, the proposal kit?
- 5 A. Yes, sir.
- 6 Q. Do they amend these kits from time to time?
- 7 A. Absolutely.
- 8 Q. The proposal kit we have in evidence says 2000?
- 9 A. That is correct, and it was prepared for the 2001
- 10 competition. That is the kit under which CASI applied.
- 11 Q. And when you made that site visit, you saw a number of
- 12 individuals there who were not listed in the budget that was
- 13 submitted to ATP, correct?
- 14 THE COURT: Which site visit, Mr --
- 15 Q. The first site visit?
- 16 A. There was some confusion on our part as to who was in the
- 17 room versus who was in the proposal, and we reminded Dr. Karron
- 18 to formally submit any changes in personnel with justification.
- 19 Q. And did you discuss who those people were in the apartment?
- 20 A. We go around and we make introductions and we discuss --
- 21 yes, who those people were.
- 22 Q. And did you learn that they were students, graduate
- 23 students that were there?
- 24 A. Uh-huh. Some of them, right.
- 25 Q. And were working on this project, right?

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863ZKAR4 Lide - cross

- 1 A. And what we were asking was for official documentation so
- 2 that they could become part of the official grants.
- 3 O. Did you understand that some of these people were working
- 4 without compensation?
- 5 A. And that is perfectly acceptable, and then we don't need
- 6 the official approval as long as they're not getting government
- 7 funds.
- 8 Q. You found that -- by the way, when you would get e-mails
- 9 from Dr. Karron, what hours of the day or night would you say
- 10 you would get e-mails from him?
- 11 A. I assume you mean when they're written?
- 12 Q. Yes.
- 13 A. I think it's across the board, as most of us read e-mail
- 14 and write e-mail, basically, 24 hours a day.
- 15 Q. And are you aware of any other project that CASI was
- 16 involved in?
- 17 A. At that time, there were some listed in the original
- 18 proposal. We always ask what other projects are you doing or
- 19 have you done, and there were several in the original proposal.
- 20 Q. Of projects that had been done, correct?
- 21 A. Correct.
- 22 Q. And, in fact, you knew that this was the only project that
- 23 CASI was working on was this ATP grants, correct?
- 24 A. That was our understanding. At the same time, it was our
- understanding that they were looking for other funding to do SOUTHERN DISTRICT REPORTERS, P.C.

863ZKAR4 Lide - cross

- 1 complimentary research.
- Q. Now, it's fair to say that you, in your capacity of were
- 3 watching over these various projects, correct?
- 4 A. Uh-huh.
- 5 Q. To assist them in developing, right?
- 6 A. Assist them in developing?
- 7 Q. Yeah, so that they could eventually meet whatever
- 8 scientific end were capable being; that's the hope, right?
- 9 A. The research is theirs to perform.
- 10 Q. And you you evaluate, do you not, how they're performing,
- 11 correct?
- 12 A. We get quarterly reports which we read, and oversee
- 13 progress.
- 14 Q. Isn't it a fact that you found that CASI's project was
- 15 technically exciting?
- 16 A. Yes. It would not have received an ATP award if it were
- 17 not.
- 18 Q. And is it a fact that while the CASI perform was suspended,
- it seemed to be making technical progress?
- 20 A. Technically it seemed to be making progress, yes. If it's
- 21 not meeting the goals in the proposal, then clearly it's
- 22 suspended for other reasons.
- 23 Q. Now, in the budget you're allowed to move any item --
- increase it by 10 percent, is that correct?
- 25 A. If you decrease something else by the equivalent amount,

863ZKAR4 Lide - cross

- 1 and if it's within 10 percent of that year's budget. So
- 2 cumutatively over year one, only \$80,000 could have been moved
- 3 without prior approval.
- 4 Q. Can you -- in other words, they doesn't utilize the
- 5 10 percent, the ten million -- the two million rather?
- 6 A. No. It's on a year-to-year basis.
- 7 Q. And is that specified in some of this material?
- 8 A. Yes. I believe it's actually in the special award
- 9 condition, which I can try to find, but that's articulated very
- 10 clearly in -- at all these meetings and kickoffs and proposers
- 11 conferences, et cetera. It could also be in Exhibit 4 in those
- 12 slides.
- 13 Q. Isn't it a fact that -- you've testified about receiving
- 14 prior approval, correct, in writing before you do something?
- 15 A. Yes, sir.
- 16 Q. Isn't it a fact, ma'am, that you --
- 17 THE COURT: I'm sorry?
- 18 Q. -- received approval for the first time at the end of the
- 19 the year that you could seek budget revisions?
- 20 MR. KWOK: Objection.
- 21 THE COURT: I don't understand the question, Mr --
- 22 Q. Are you prepared --
- 23 THE COURT: You will have to start over again because
- 24 I couldn't follow your question.
- 25 THE WITNESS: Thank you.

863ZKAR4 Lide - cross

1 Q. Are you permitted, at the end of the first year, to review

- the cost, your cost and submit a revised budget and a narrative
- 3 if changes have occurred?
- 4 A. No. You are permitted to request changes and get approval
- 5 in writing at any point. But as I said earlier in testimony,
- 6 after the fact it is at your own risk.
- 7 O. Let -- the Exhibit 4 is -- the government Exhibit 4 are the
- 8 slides, correct?
- 9 A. Yes, sir.
- 10 Q. Now, I show you this document. You have the original of
- 11 Exhibit 4, do you not?
- 12 A. I have the government Exhibit 4. I assume it's the
- original, if it has a yellow sticker.
- 14 THE COURT: You have the excerpts or the whole thing?
- 15 THE WITNESS: I believe I have the whole thing,
- 16 Exhibit 4.
- 17 Q. Why don't you turn to page 11. Unfortunately, the jurors
- 18 don't have this page.
- 19 THE COURT: It's not in your books, ladies and
- 20 gentlemen, I don't believe.
- MR. RUBINSTEIN: Is there a way to put that up on the
- 22 board; do they have the whole document in there?
- 23 THE COURT: Exhibit 11? Have we got exhibit 11?
- MR. RUBINSTEIN: Exhibit 4, page 11, your Honor.
- THE COURT: Page 11?

863ZKAR4 Lide - cross

1 THE DEPUTY CLERK: Exhibit four, page 11?

- 2 MR. RUBINSTEIN: That's correct.
- 3 THE COURT: All right.
- 4 THE DEPUTY CLERK: Exhibit 4, page 11.
- 5 THE COURT: All right, it's placed on the -- is this
- 6 the -- you've got the correct page you want?
- 7 THE COURT: Leave it up there, who is putting it up?
- 8 MR. RUBINSTEIN: I'll show you what it is. No, just a
- 9 second. Here.
- 10 Q. That is one of the pages that you show at the first meeting
- 11 with the people from CASI, correct?
- 12 A. Correct.
- 13 Q. Now, on that page it says, recipient responsibility, does
- it not, ma'am?
- 15 A. Yes, it does.
- 16 Q. And it says in the second paragraph, review costs at the
- 17 end of each year and submit a revised budget and a narrative if
- 18 changes have occurred, correct?
- 19 A. That's what it says, yes, sir.
- 20 Q. And that was shown to Dr. Karron, right?
- 21 A. Correct.
- 22 O. Lee Gurfein was there?
- 23 A. He was at the kickoff.
- Q. And Dr. Satava was there, correct?
- 25 A. Correct.

863ZKAR4 Lide - cross

- 1 MR. RUBINSTEIN: Your Honor, this is a good spot to
- 2 break for lunch.
- 3 THE COURT: Let's finish the line of questioning. Are
- 4 you almost done with this?
- 5 MR. RUBINSTEIN: No, but with this exhibit. If you
- 6 want me to continue with the exhibit, I have no --
- 7 THE COURT: No, whatever your point is.
- 8 MR. RUBINSTEIN: No, this point I'm finished with,
- 9 Judge.
- 10 THE COURT: Oh, you're finished with it? Okay.
- 11 MR. RUBINSTEIN: Yeah. I'll -- just a second, Judge,
- 12 maybe I'm not finished.
- 13 BY MR. RUBINSTEIN:
- 14 Q. So, in fact, according to this page, page 11, you don't
- 15 have to submit to get written approval before you spend the
- 16 money, correct?
- 17 A. No, that's taken out of context.
- 18 Q. Okay.
- 19 MR. RUBINSTEIN: No further questions on this topic at
- 20 this time.
- 21 THE COURT: All right, then we'll -- the jury is
- 22 excused. Please come back at 2:00 o'clock and we'll resume.
- 23 (Jury exits the courtroom)
- 24 THE COURT: Counsel.
- 25 (In open court; jury not present)

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1 THE COURT: Ms. Lide, I guess you're excused.

- THE WITNESS: I'm sorry, I'm sorry.
- 3 THE COURT: It's all right.
- 4 THE WITNESS: I'm trying to get --
- 5 THE COURT: You have to wait till the jury leaves, and
- then be back here by 2:00 o'clock.
- 7 THE WITNESS: Thank you, sir.
- 8 THE COURT: Do you want an instruction to the witness,
- 9 Mr. Rubinstein?
- 10 MR. RUBINSTEIN: No, your Honor. I have no problem
- 11 with Ms. Lide.
- 12 THE COURT: Anything else?
- 13 MR. KWOK: Nothing from the government at this time.
- 14 THE COURT: Let's be back here about ten minutes to
- 15 two, so we're -- if you think of anything at that time we'll be
- able to deal with it and not hold up the jury.
- 17 MR. DiCENZO: Your Honor, I just want -- I'm an
- 18 associate of Mr. Rubinstein's my name is William Di Cenzo and I
- 19 just want to inform you that I may be sitting at counsel table.
- THE COURT: What's your name?
- 21 MR. DiCENZO: William DiCenzo.
- 22 THE COURT: All right.
- MR. DiCENZO: Just to let you know.
- MR. EVERDELL: Your Honor, there is one other thing.
- 25 It is possible for the next witness we may be introducing a

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1 document that we hadn't anticipated needing to do, but the CFR

- 2 regs, and I have copies of it, I have enough for the jury, it's
- 3 not in the sanction program, but we can use the Elmo for it.
- 4 If and when we need to do that, would it be all right for me to
- 5 just pass out the applicable regs to the jury and --
- 6 MR. EVERDELL: -- do it that way.
- 7 THE COURT: The whole CFR?
- 8 MR. EVERDELL: Just the particular regs that the
- 9 witness will be testifying to and that -- I mean I could mark
- 10 it as a government exhibit or the Court could take judicial
- 11 notice of the fact that it's the CFR reg, either way is fine
- 12 with me.
- 13 THE COURT: Well, give Mr. Rubinstein notice that
- 14 you're doing it.
- 15 MR. RUBINSTEIN: I have my own copy of the regs. I
- 16 have an objection to, if they they want to put this in
- 17 evidence, and then want to show that one page, okay. I
- 18 don't -- I think that's an appropriate thing to do. But to
- 19 give the jury one page of a reg, I think is absolutely
- 20 misleading.
- 21 THE COURT: You can --
- 22 MR. EVERDELL: I can't give him the entire CFR, that
- 23 seems a little silly. I'm giving them the reg that's
- 24 applicable to her testimony, and I don't even need to put it
- into evidence because it's the CFR and you can take notice of

863ZKAR4 Lide - cross

- 1 it. It doesn't even need to be in evidence. It's a law. I'm
- 2 just doing this for the purposes so the jury to follow along
- and so that we can make it go smoothly.
- 4 MR. RUBINSTEIN: That puts it in evidence if it's law,
- 5 CFR.
- 6 The point of the matter is, Judge, that, you know,
- 7 they're cherry picking. This is a term for 2001, cherry
- 8 picking, I learned it. And they have a 100 page document and
- 9 they want to -- if somebody was giving me \$2 million, I would
- say, where do I sign and be out the door.
- 11 MR. EVERDELL: It seems like counsel would like me to
- 12 give them the entire book of the Code of Federal Regulation,
- 13 which is not --
- 14 THE COURT: I'm going to allow them to just produce
- 15 the CFR and put it up on the board.
- 16 MR. EVERDELL: Thank you, your Honor.
- 17 THE COURT: It's Code of Federal Regulation. There
- 18 are more than one section of the CFR that --
- 19 MR. EVERDELL: Yes, your Honor. The only one that I
- 20 believe the witness, I'll need the witness to testify about is
- 21 a two page section, we'll just handle it with the elmo.
- 22 THE COURT: Of course you can put in whatever reg you
- want to.
- MR. EVERDELL: We absolutely can.
- 25 (Luncheon recess)

SOUTHERN DISTRICT REPORTERS, P.C.

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1 AFTERNOON SESSION

- 2 2:00 p.m.
- 3 THE DEPUTY CLERK: All rise.
- 4 THE COURT: Please be seated.
- 5 (Jury not present)
- 6 THE COURT: Are we ready for the jury?
- 7 MR. RUBINSTEIN: Yes, your Honor.
- 8 MR. KWOK: Yes, your Honor.
- 9 THE COURT: All right, let's get the witness; bring in
- 10 the jury.if they're ready.
- 11 (Jury entering)
- 12 THE COURT: Please be seated, witness take the stand.
- 13 Please be seated. Continue, Mr. Rubinstein.
- MR. RUBINSTEIN: Thank you, your Honor.
- 15 BY MR. RUBINSTEIN:
- 16 Q. Miss Hayes, I'm sorry, Ms. Lide, CASI was a unique company,
- was it not, in the fact that it only had the ATP grants that
- 18 they were working on?
- 19 THE COURT: I think you've been through this before,
- 20 Mr. Rubinstein.
- 21 MR. RUBINSTEIN: I'm just laying --
- 22 THE COURT: It's getting very duplicative.
- 23 BY MR. RUBINSTEIN:
- Q. It's a fact that indirect costs are not allowed according
- 25 to ATP grants, correct?

863zkar4 Lide - cross

- 1 A. Yes.
- 2 O. And indirect -- and the reason for that is that if a
- 3 business is functioning, they may have other customers and
- 4 other work and they don't apply to costs, divide up the costs
- 5 of the rent between a number of different customers?
- 6 A. Is that a question, sir?
- 7 O. Yeah.
- 8 A. Or statement?
- 9 Q. It's a question.
- 10 A. No. The reason actually for a single company paying its
- 11 own indirect cost is because the U.S. Congress set up the
- 12 Advanced Technology Program as a cost sharing program, and they
- 13 wanted the government to share the risk. But they also wanted
- 14 to know that the for profit company had something at risk also.
- 15 So it's by statute, the ATP statute, which is part of the
- 16 Omnibus Trade Bill of 1988 established that, and that was the
- 17 reason for it.
- 18 Q. In fact, there's a 3.61 co-pay, right? Is that so that the
- 19 person has to put up a co-pay?
- 20 A. No sir. No, sir. The only requirement, according to the
- 21 ATP statute for a single company, is that they pay their own
- 22 indirect costs. They can also propose to pay some of the
- 23 direct costs, which in CASI's case was the case.
- 24 Q. And they could request that ATP permit them to pay some
- indirect costs and approve that, correct?

863zkar4 Lide - cross

1 A. They have to pay all their own indirect costs. They don't

- 2 request that, it's in our legislation.
- 3 Q. Isn't it a fact that CASI was negotiating with your agency
- 4 to approve part of the electrical expenses as a direct cost to
- 5 the project?
- 6 A. I am not aware of that, sir.
- 7 Q. And how many -- do you have -- are you aware of the amount
- 8 of time that Dr. Karron spent on the CASI project?
- 9 A. It's my --
- 10 THE COURT: This --
- 11 MR. KWOK: Objection.
- 12 THE COURT: This witness was not present during the
- 13 time that doctor, all the time that Dr. Karron was working on
- 14 the project. Let's, please, let's get the questions that this
- 15 witness can answer.
- 16 Q. Well, you questioned Dr. Karron as to what he was doing,
- 17 did you not?
- 18 THE COURT: That --
- 19 A. I don't remember questioning him as to what he was doing.
- 20 Q. Now, the Exhibit 4 you said were slides that you show --
- 21 you showed CASI at the initial kickoff meeting, correct?
- 22 A. Yes, that is correct.
- 23 Q. Now did you -- when you call them slides, were they
- 24 actually slides that you put on the screen or you just handed
- 25 them?

863zkar4 Lide - cross

1 A. I don't recall whether they were on a screen or not. It

- 2 was in a room that would have that capability.
- I know we also give hard copy, and we also e-mail them
- 4 so that we make sure the recipient has them. But whether or
- 5 not we showed them on a screen that day, it was a small group,
- 6 I'm not sure.
- 7 Q. Well, did you discuss there were a number of pages, the
- 8 actual exhibit, correct?
- 9 A. Yes.
- 10 Q. There are, fair to say, there's at least 60 pages in the
- 11 original exhibit?
- 12 A. Uh-huh.
- 13 Q. Did you discuss each page with Dr. Karron and Lee Gurfein,
- and the other doctor that was present?
- 15 THE COURT: Which page of which exhibit?
- MR. RUBINSTEIN: Exhibit 4.
- 17 A. There were three of us and, yes, we do go through page by
- 18 page highlighting the key events on each page. There are three
- of us and we do go page by page, that is correct.
- 20 Q. You have no notes as to which you highlighted and which you
- 21 didn't highlight, correct?
- 22 A. Well, what we usually do is almost read the bullets and ask
- 23 the recipient if there are any questions.
- 24 But each of the three of us would have done it
- 25 differently, and I certainly cannot speak to how the other two SOUTHERN DISTRICT REPORTERS, P.C.

863zkar4 Lide - cross

1 individuals did their parts this much after the fact.

- I know I tend to go bullet by bullet and make sure
- 3 it's understood by the recipient.
- 4 Q. And were there, at this kickoff meeting, were there
- 5 discussions as to these various points?
- 6 A. We, we discussed these various points. Whether or not
- 7 there were respect questions on CASI's part, I do not recall.
- 8 But we always ask, do you have any questions about this.
- 9 Q. Now, Exhibit 4, is that the actual exhibit that was
- 10 presented to CASI on this kickoff visit?
- 11 A. Yes.
- 12 Q. And that kickoff visit was what date?
- 13 A. It was November of 2001. And if I had to come up with a
- 14 day, I would say 8th'ish.
- 15 Q. Now, take a look at exhibit four. You see the first page
- 16 of Exhibit 4?
- 17 A. First page, okay.
- 18 Q. Says CASI introduction to ATP project management?
- 19 A. Well, actually mine's in a different order, sir. My first
- 20 page says grants and agreements management division. I do see
- 21 the page -- oh, and I was right, it's November 8th. I do see
- the page to which you're referring.
- 23 THE COURT: What page is it, so the record's clear?
- 24 MR. RUBINSTEIN: The original Exhibit 4 are 65 pages,
- 25 your Honor.

863zkar4 Lide - cross

1 THE COURT: Let's have the page so we can put it up on

- the board. It isn't in the highlight, the extracts, right?
- 3 MR. KWOK: I don't believe so, your Honor, but we will
- 4 attempt to show it on the screen.
- 5 THE COURT: So the jury won't have it in the extracts.
- 6 MR. RUBINSTEIN: Could we put it on the elmo, your
- 7 Honor?
- 8 THE COURT: Yes. This is a page from Exhibit 4?
- 9 MR. RUBINSTEIN: Even I know how to do that one,
- 10 Judge.
- 11 Q. Now that's the first page, right?
- 12 A. In my folder it is not. However, I do believe that that is
- 13 how we started the kickoff.
- 14 Q. Now, you see the upper left-hand portion of that screen
- where it says, ATP?
- 16 A. I do, yes, sir.
- 17 Q. Are you telling us that this is the same document that you
- 18 presented on November 8th, 2001?
- 19 A. I would find it hard to believe that it's not. I mean, two
- 20 pages later we have the information with our names on it,
- 21 and --
- 22 Q. Let me show you what's government -- could we put this
- 23 side-by-side, please? It's Government's Exhibit 4. Is there
- 24 an exhibit page? I would like to put this side by side.
- 25 A. That's the first page in my exhibit, that is correct.

863zkar4 Lide - cross

- 1 Q. Okay. And could we put it up, the first page?
- 2 A. Uh-huh.
- 3 O. Now, do you see that the ATP is, you say that's from the
- 4 same file?
- 5 A. Absolutely.
- 6 Q. Different font sizes of the --
- 7 A. Correct. I can explain that if you like.
- 8 Q. And where did you retrieve this Government's Exhibit 4?
- 9 A. In the master file, in the Advanced Technology Program, as
- 10 I mentioned earlier, it's a documentary file of all of the
- information for that project.
- 12 Q. Now, included in this submission is a page that I don't
- 13 think is in the binders.
- 14 THE COURT: Just ask the question, let's not have a
- 15 speech.
- 16 Q. I show you this page.
- 17 THE COURT: The jury is instructed you're not to take
- 18 the questions as being any evidence whatsoever. Such facts as
- 19 exists in the answer that matters.
- 20 MR. RUBINSTEIN: I'll withdraw the question, Judge.
- 21 Q. In the recipient responsibility, did your chart -- did your
- 22 presentation advise the recipient that they were required, if
- 23 there was a change in the organizational structure, such as a
- 24 name change, that they had to notify and get prior approval?
- 25 THE COURT: Are you asking whether on page two of SOUTHERN DISTRICT REPORTERS, P.C.

863zkar4 Lide - cross

- 1 government exhibit --
- 2 MR. RUBINSTEIN: This is --
- 3 THE COURT: Four.
- 4 MR. RUBINSTEIN: This has a number seven. Mine has a
- 5 number seven on the right-hand side. It's not up there, Judge.
- 6 Q. This is the page that says prior approvals, notify the
- 7 grants specialist, right?
- 8 A. Okay. And those are the kinds of changes that we need to
- 9 be apprised of instantly, and prior approval should be received
- 10 in writing.
- 11 Q. Did you ever receive a request for the name change of CASI?
- 12 A. I don't recall receiving that.
- 13 Q. Are you --
- 14 A. But -- I don't recall seeing that.
- 15 Q. Are you aware that the prior approval, according to the, to
- 16 exhibit four, that somebody must have notified the grant
- 17 specialist the prior approval, if there is a name change?
- 18 A. That is the sort of change that we like to receive as soon
- 19 as possible, and prior approval then is provided as a written
- 20 amendment.
- 21 Q. Now, when you came for the site, the first site visit and
- 22 you came -- you met with Dr. Karron, did you meet Joan Hayes at
- 23 that time?
- 24 A. I have met Joan Hayes. I would assume she was at that site
- visit, but I cannot verify that in any certainty.

863zkar4 Lide - cross

1 Q. Well, when you went to the site visit, is it a fact that

- 2 you went to lunch with Dr. Karron, with your partner, Jane
- 3 Orthwein, you went to a restaurant called Benjamin's for lunch?
- 4 A. I believe so.
- 5 Q. And you had gone to lunch -- when Dr. Karron came to
- 6 Washington, you had lunch together with him there too in a
- 7 dining room?
- 8 A. We met in the cafeteria.
- 9 Q. And it's part of the protocol, government protocol that you
- 10 pay for your own lunch when you go out with somebody who is a
- 11 recipient of the grants?
- 12 A. Yeah. We are only allowed to accept a certain level of any
- 13 financial remuneration.
- 14 Q. So there never was a time that Dr. Karron took you out for
- 15 some kind of a lavish meal somewhere and picked up the check,
- 16 right?
- 17 A. We would not have permitted that, thank you.
- 18 Q. And so did you think that he was making a joke when you
- 19 testified that he told you if he, if he took you out for a nice
- 20 meal, then he wouldn't have to make any budget revisions?
- 21 MR. KWOK: Objection.
- 22 THE COURT: Objection sustained.
- 23 Q. By the way, do you recall if you ever went to lunch with
- 24 Dr. Karron and Joan Hayes, as you sit there now?
- 25 A. I certainly do not recall that.

863zkar4 Lide - cross

- 1 Q. Now, the equipment that was purchased by Dr. Karron
- 2 pursuant to this grants, could you describe what he purchased?
- 3 A. I could describe what was in the proposal, which were
- 4 several silicon graphics servers and some work stations.
- 5 Q. In fact, he would buy parts and put them together and
- 6 basically create his own computers, correct?
- 7 A. Um, the discussion on that was not consistent.
- 8 Q. Well, in other words, if I -- if somebody wanted to go buy
- 9 a computer and they --
- 10 THE COURT: Well, the form of the question, Mr --
- 11 Q. Well, was it, the computers that Dr. Karron had, did they
- 12 have any brand name on them?
- 13 A. It was my understanding that the ones he wished to purchase
- 14 were silicon graphics. In the original proposal, it was said
- that the company had a state-of-the-art computer facility.
- 16 Later in the quarterly reports it was said that this was
- 17 patched together. So I had some confusion as to the level of
- 18 sophistication of the equipment and from where it came. I do
- 19 know what was requested in the budget, and as such, was
- approved for purchase.
- 21 Q. Well, did you discuss with Dr. Karron, when you met him or
- 22 on telephone or in e-mail, as to the equipment that he was
- 23 utilizing to effect his research on this project?
- 24 THE COURT: At what point of time?
- Q. At any point in time before the grant was suspended, from SOUTHERN DISTRICT REPORTERS, P.C.

863zkar4 Lide - cross

- 1 October 2001 through June of 2003?
- 2 A. As I mentioned earlier, equipment was always an issue, and
- 3 that's why we were requesting modified budgets and
- 4 justification so that we could see exactly what existed, what
- 5 needed to be purchased.
- 6 Q. He had a budget that permitted him to spend money on
- 7 equipment, correct?
- 8 A. To a certain level, that is correct.
- 9 Q. And did you ever check the financials to see whether or not
- 10 he had spent the money on equipment?
- 11 A. The interesting thing is technical project managers --
- 12 THE COURT: Objection -- answer yes or no.
- 13 A. I'm not privy to those financials.
- 14 Q. Now, on direct examination you alluded to in Exhibit 2,
- 15 page three relating to the disposition of equipment, correct?
- 16 A. Yes, sir.
- 17 Q. And, in fact, the government permits the grantee, who
- 18 purchases the equipment, to retain the equipment, right?
- 19 A. To request to retain the equipment.
- 20 Q. And, in fact, the request is virtually always granted,
- 21 correct?
- 22 A. I don't know. It is usually granted.
- 23 Q. And, in fact, the grantee is not permitted to depreciate
- this equipment because really it's the Government's equipment?
- MR. KWOK: Objection.

863zkar4 Lide - cross

- 1 Q. Are you aware of that or not?
- 2 MR. KWOK: Objection.
- 3 THE COURT: Is that so, that they're not permitted to
- 4 depreciate the equipment?
- 5 THE WITNESS: Um, I don't know in what sense.
- 6 I don't understand that question, as our terms and
- 7 conditions say that they have to account for it every two years
- 8 until it reaches less than 5,000. So that indicates to me that
- 9 it's being depreciated.
- 10 But as a project manager, I'm afraid I don't
- 11 understand how you are using the term depreciate, the company
- 12 depreciating it.
- 13 Q. Well, in other words, they have to account, so if they say
- 14 they still have the equipment, the government doesn't come and
- take the equipment back, correct? I'll withdraw it.
- 16 Is it fair to say it's not theirs to sell, it's theirs
- 17 to use?
- 18 A. Yes.
- 19 Q. And it's theirs to use until it's not worth \$5,000 correct?
- 20 A. And as long as they're using it on the goals of the project
- 21 for which we gave them the award.
- 22 Q. But after it's not worth \$5,000, then they could keep it
- 23 right?
- 24 A. Correct.
- Q. Now, CASI had equipment when they received the grants that SOUTHERN DISTRICT REPORTERS, P.C.

863zkar4 Lide - cross

- 1 they owned prior to receiving the grants, did they not?
- 2 A. Yes.
- 3 O. And there is a concept in co-funding that you could use
- 4 equipment or in kind, other than cash, as your contribution for
- 5 co-funding, correct?
- 6 A. Only to a certain level.
- 7 Q. But you can use it. In other words, if someone has
- 8 \$100,000 worth of equipment when the grant starts, they could
- 9 utilize that hundred thousand dollars to a percentage of the
- 10 hundred thousand as their contribution to the grants in lieu of
- 11 money?
- 12 A. No. It would not be a percentage of the hundred thousand.
- 13 It would be a percentage of the depreciation of the equipment,
- 14 for each year it was used for that project.
- 15 Q. And that would apply towards your co-funding as the
- 16 grantee, you would get credit for that?
- 17 A. With approval, yes.
- 18 Q. Now, in your presentation on November 8th, 2001, you
- 19 also -- this might be in the book.
- 20 MR. RUBINSTEIN: This is in Exhibit 4, not in the
- 21 binders that the jurors have.
- 22 THE COURT: Is that the proper page that's been shown,
- 23 procurement standards?
- MR. RUBINSTEIN: Yes.
- Q. Now, there has to be a written policies and procedures,

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- 1 correct?
- 2 A. Yes.
- 3 Q. Was there any written -- did CASI have any written policies
- 4 and procedures?
- 5 A. I am not aware that they did.
- 6 Q. And in addition to that relating to fringe benefits,
- 7 there's supposed to be a manual created by the company?
- 8 A. There's supposed to be a document outlining them, yes, sir.
- 9 Q. And who creates that document?
- 10 A. The company.
- 11 Q. And who reviews that document?
- 12 A. Not the government.
- 13 Q. In other words, if an employer -- if CASI had a written
- 14 manual for fringe benefits in place, no one in the government
- 15 would review that document?
- 16 A. Not --
- 17 Q. Correct?
- 18 A. -- before the grant was given. It certainly could come
- 19 into an audit.
- 20 Q. Now, when was the last revision granted of the budget?
- 21 A. I can look up the date. It was the very very end of
- 22 January, the early days -- end of December, early January
- 23 between 2001 and 2002, and -- I'm sorry, and it's -- let's see.
- Okay. It is signed by our grants officer on January 4th of
- 25 2002.

863zkar4 Lide - cross

1 Q. What exhibit number is that, ma'am?

- 2 A. It is exhibit 22.
- 3 O. Now, in that exhibit there is a reduction in amount of
- 4 salaries for employees, correct?
- 5 A. Yes, sir.
- 6 Q. And there is also a reduction in the total amount that
- 7 could be spent on fringe benefits, is that right?
- 8 A. Well, yes, and that makes sense because fringe benefits is
- 9 a percentage of salaries.
- 10 Q. So, is that anywhere in any literature that fringe benefits
- is a percent of salary?
- 12 A. Well, it's -- yeah. I even it comes in the budget
- 13 narrative. If you look at the salaries and then the next block
- 14 says what are the fringe benefits and it says, you know,
- 15 34 percent or whatever.
- 16 Q. Can you pick your own percentage?
- 17 A. As long as it's -- well, can you pick your own percentage?
- 18 It clearly goes with the written document that you have that is
- 19 industry practice. We don't ask for detailed explanation or
- 20 breakdown if it's under 35 percent.
- 21 THE COURT: Is it a written policy of the company that
- they have to present to you?
- 23 THE WITNESS: If they do not present it at award, it's
- the honor system, but it does come to play when the company is
- 25 audited.

	863zkar4 Lide - cross
1	THE COURT: But it's the company's written the
2	company has to have adopted written policy.
3	THE WITNESS: Yes, sir, and that percentage is in
4	their budget documentation.
5	THE COURT: As opposed to the industry policy.
6	THE WITNESS: The companies should be in line with
7	other companies in that particular industry.
8	THE COURT: It has to be in writing.
9	THE WITNESS: The company's policy should be in
10	writing, yes, sir has to be, yes.
11	(Continued on next page)
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SOUTHERN DISTRICT REPORTERS, P.C.

25

8637KAR5 Lide - cross

- 1 BY MR. RUBINSTEIN:
- Q. Now, is it fair to say that from the end of 2001 going
- 3 through the summer of 2002 there were a lot of discussion about
- 4 budget revision between you and your agency and CASI?
- 5 A. That would be very fair.
- 6 Q. And who was -- were you involved in those discussions and
- 7 budget revision?
- 8 A. I was involved. I was certainly not alone in the
- 9 discussions.
- 10 Q. And who was involved? Was Lee Gurfein involved from the
- 11 CASI side?
- 12 A. Lee Gurfein was certainly involved. There were several
- 13 people involved during the course of events, and I don't recall
- 14 exactly the time frame for each of them, but Lee Gurfein was
- 15 one of them.
- 16 O. And after Lee Gurfein, there was a fellow named Peter Ross?
- 17 A. I remember that name.
- 18 Q. And he was involved in submitting budget revision requests?
- 19 A. I believe so, yes, sir.
- 20 Q. The budget revision that is submitted, did they require the
- 21 signature of Dr. Karron?
- 22 A. Let's see. They did not -- they should have had either Dr.
- 23 Karron's signature or another recognized entity from the
- 24 company, which would have been Lee Gurfein.
- Q. Now, you were trying to help CASI get these budget SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR5 Lide - cross

- 1 revisions in, correct?
- 2 A. Absolutely. It is our goal to have every project succeed
- 3 if possible.
- 4 Q. And in fact you even sent -- in fact they even sent you at
- 5 one time the wrong report?
- 6 A. Sorry. They sent me what?
- 7 Q. The wrong report involved with the budget revision? You
- 8 had asked them for different documentation, correct?
- 9 A. Right.
- 10 Q. And do you know who would provide the documentation from
- 11 CASI?
- 12 A. As I said, several individuals supplied it. Frequently it
- 13 was Dr. Karron himself.
- 14 Q. And is it a fact that at times when you asked for
- documents, the wrong documents were submitted?
- 16 A. I would have no way of knowing that unless informed by Dr.
- 17 Karron. As president, one would assume that he would review
- 18 the submissions.
- 19 Q. You know what they say when you assume.
- 20 THE COURT: Just --
- 21 MR. KWOK: Objection.
- 22 THE COURT: Let's just ask a question.
- 23 Q. Let me show you --
- 24 THE COURT: The jury is instructed to disregard the
- 25 last statement.

8637KAR5 Lide - cross

1 Q. Let me show you what has been marked as Government Exhibit

- 2 3501-FFFF and ask you if you can look at that and see if it
- 3 refreshes your recollection that you were supplied wrong
- 4 reports after a request for reports were made.
- 5 THE COURT: This is four F?
- 6 MR. RUBINSTEIN: FFFF, yes, your Honor.
- 7 Q. Does that refresh your recollection, ma'am?
- 8 A. This is an e-mail trail to my colleague that said some
- 9 report, wrong report. Jane opened some e-mail that said it was
- 10 the wrong report, and Jane and I in the subsequent e-mail were
- 11 trying to find time to meet. From this e-mail I have no clue
- 12 whether it's a financial report, a technical report. I'm
- 13 sorry, sir, but just "wrong report" doesn't tell me what kind
- of report it was.
- 15 Q. Well, I only asked if they sent the wrong report. Whatever
- 16 you were looking for, their response was incorrect, correct?
- 17 A. And in most projects I would expect the right report to
- 18 follow.
- 19 Q. Now, you also, did you not, you wanted to get the actuals,
- 20 right?
- 21 A. Absolutely.
- Q. The actual expenses that CASI had, correct?
- 23 A. After year one, actuals should have been available,
- 24 correct.
- Q. And in fact you informed CASI in October and November of SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR5 Lide - cross

1 2002 that you wanted to get the information back so that you

- 2 could expedite the approval.
- 3 A. It was our understanding that CASI wanted a revised budget,
- 4 and we were looking for the appropriate documentation to allow
- 5 us to recommend approval.
- 6 Q. And who did you understand was responsible for giving the
- 7 actual expenses of CASI?
- 8 A. That's not in my --
- 9 MR. KWOK: Objection.
- 10 THE COURT: Objection sustained. Let's move this on a
- 11 little bit, Mr. Rubinstein.
- 12 Q. When you were introduced to Joan Hayes, were you introduced
- 13 by Dr. Karron?
- 14 A. I don't recall. You don't want to hear the word assume, so
- I won't assume anything. I do not recall.
- 16 Q. Do you recall being told by Dr. Karron that Joan Hayes was
- 17 his business mom?
- 18 A. Mom?
- 19 O. Yeah, like mother.
- 20 A. No, I don't recall that, sir.
- 21 Q. Now, the audit is supposed to be submitted, is it not,
- 22 within 90 days of the end of the fiscal year for the
- 23 government?
- 24 A. The end of the first year of the project. It doesn't have
- 25 to do with our fiscal year.

8637KAR5 Lide - cross

1 Q. Well, this project ended September 30, 2002.

- 2 A. The first year of it did, yes, sir.
- 3 Q. First year. And an audit was due, right?
- 4 A. Correct.
- 5 Q. From an independent auditor, correct?
- 6 A. If that's the company's choice, that is correct.
- 7 Q. And were you involved in attempting to get the company to
- 8 comply and submit an audit?
- 9 A. Actually we have a separate department at NIST in the
- 10 grants office that's responsible for audits, and that's with
- 11 whom the company works if they need an extension or anything
- 12 like that.
- 13 Q. And did Dr. Karron suggest to you that you and Jane should
- speak have a teleconference with Joan his auditor and
- 15 accountant about the actuals?
- 16 A. I don't recall, but we would need those actuals in writing
- for any revision to the budget.
- 18 Q. Let me show you what is -- see if this refreshes your
- 19 recollection. I show you what has been marked as Government
- 20 Exhibit 3501-PPP.
- 21 THE COURT: Triple P?
- MR. RUBINSTEIN: PPP.
- 23 Q. And 3501-KKK and 3501-LLL. Take a look at these documents
- 24 and see if it refreshes your recollection as to whether or not
- Dr. Karron wanted you and your partner Jayne Orthwein to speak SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR5 Lide - cross

- 1 to Ms. Hayes his auditor and accountant.
- 2 A. Yes, these e-mails do seem that a conference call -- which
- 3 hopefully according to these e-mails would include Ms. Hayes --
- 4 is what's documented in these e-mails.
- 5 THE COURT: Well --
- 6 THE WITNESS: It sounds like from this large trail of
- 7 e-mail that Dr. Karron was suggesting a conference call and by
- 8 his own words it says hopefully Joan Hayes can join us.
- 9 THE COURT: That's all it says. The rest of his
- 10 question about employing an accountant, is that in there?
- MR. RUBINSTEIN: Yes.
- 12 THE WITNESS: Well, I mean I will be happy to take the
- 13 time --
- 14 THE COURT: Show her the document.
- 15 MR. RUBINSTEIN: I will show her exactly where it is.
- 16 THE COURT: Let's move this along.
- 17 THE WITNESS: Thank you, because these are not in
- 18 chronological order.
- 19 MR. RUBINSTEIN: They are. They are not in letter
- order. I had to put them in chronological order.
- 21 O. Do you see where it's underlined?
- 22 A. I certainly do.
- 23 Q. Good.
- 24 A. So it says, "If appropriate, can I bring Joan our auditor
- and accountant in for the meeting?"

8637KAR5 Lide - cross

1 THE COURT: What document is that?

- 2 MR. RUBINSTEIN: This is 3501-PPP, your Honor.
- 3 MR. KWOK: Objection. It's not in evidence.
- 4 MR. RUBINSTEIN: The judge asked me to identify the
- 5 document.
- 6 THE COURT: Do you recall that?
- 7 THE WITNESS: I mean my name is on the e-mail, so
- 8 therefore it's one of many e-mails. I do not recall.
- 9 THE COURT: Does it refresh your recollection?
- 10 THE WITNESS: No, sir, it does not.
- 11 THE COURT: The jury is instructed to disregard the
- 12 question and answer. It's not proper evidence.
- 13 Q. Then I will ask you, is this an e-mail that you sent,
- 14 3501-PPP, is this an e-mail that you sent on December 3, 2002
- 15 at 11:54? I'm sorry. Is this an e-mail that you received from
- 16 Dr. Karron on December 3, 2002, about 11:54 in the morning?
- 17 MR. KWOK: Objection.
- 18 THE COURT: Instead of referring -- if you want to put
- 19 those in evidence, move them into evidence.
- 20 MR. RUBINSTEIN: I do. OK. I move --
- 21 THE COURT: Don't approach it this way. Let's get it
- 22 over with and get it done.
- 23 MR. RUBINSTEIN: I offer into evidence Government
- 24 Exhibit 3501-PPP.
- MR. KWOK: Objection.

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8637KAR5 Lide - cross

- 1 THE COURT: On what ground?
- 2 MR. KWOK: The witness says she does not recall.
- 3 THE COURT: It doesn't matter, does it? Isn't this a
- 4 document kept in the regular course of business, these e-mails?
- 5 THE WITNESS: Yes, sir, we keep all of the e-mails.
- 6 MR. KWOK: Withdrawn.
- 7 THE COURT: Put it in evidence and then can you
- 8 display it to the jury. But let's move it along.
- 9 MR. RUBINSTEIN: I will just read a portion of it in
- 10 the middle of the page, it says, "Please relay your concerns to
- 11 myself and Peter." This is from Dr. Karron. "Once we have
- 12 NIST's approval, we will formally bring him onboard. When you
- and Jayne are ready, we can have a teleconference if
- 14 appropriate. I can bring Joan our auditor and accountant in
- 15 for the meeting, and we can perhaps whack each audit issue dead
- 16 with all onboard one at a time like ducks in a row."
- 17 THE COURT: Give us a date.
- MR. RUBINSTEIN: This is on December 3, 2002.
- 19 O. Now, as a matter of fact, Ms. Lide --
- 20 THE COURT: So Defendant's A in evidence?
- MR. RUBINSTEIN: Yes, your Honor.
- 22 (Defendant's Exhibit A received in evidence)
- 23 Q. You had requested that Dr. Karron speak on behalf of ATP at
- 24 conferences?
- 25 A. That is correct, we ask that of all of our recipients.

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(212) 805-0300

8637KAR5 Lide - cross

- 1 Q. And Dr. Karron did speak at conferences for you?
- 2 A. I believe at one he did. One he was unavailable, if I
- 3 remember correctly.
- 4 Q. And I think this morning you said that in fact there were
- 5 five different submissions for revisions that had different
- 6 numbers on them, correct?
- 7 A. I believe that was the number, yes.
- 8 Q. And in fact Dr. Karron requested -- withdrawn.
- 9 You had contact with a man named Bob Benedict, did you
- 10 not?
- 11 A. I do not recall contacting Bob Benedict personally, no,
- 12 sir.
- 13 Q. Do you recall being informed that he was the new business
- 14 manager for CASI?
- 15 A. I recall being informed that he would be joining the
- 16 company, but there was no prior approval that he was named as
- 17 the new business manager. I have no amendment showing me that.
- 18 Q. Well, was he ever approved?
- 19 A. To the best of my knowledge, no. There is no amendment in
- 20 my folder that says he was approved.
- 21 Q. But it is a fact that you had contact with Bob Benedict, he
- 22 on behalf of CASI and you on behalf of the ATP project.
- THE COURT: Is that correct?
- 24 A. I know we had an e-mail from Bob Benedict. I'm not sure if
- there were any phone conversations.

8637KAR5 Lide - cross

1 Q. In fact during the time that these various budget revisions

- were being submitted, you had Dr. Karron present a paper at a
- 3 conference Where Medical Meets Virtual Reality, on March 22 and
- 4 23rd of --
- 5 THE COURT: What is the relevance of this,
- 6 Mr. Rubinstein?
- 7 MR. RUBINSTEIN: The relevance is that up until --
- 8 THE COURT: No, I don't want a speaking -- think about
- 9 it before you do it, and we can have a sidebar and allow it
- later, but let's go ahead with the examination.
- 11 MR. RUBINSTEIN: I'm not going to spend the time to do
- 12 that, your Honor.
- 13 THE COURT: Let's ask the question then. Let's keep
- 14 to relevant questions.
- 15 Q. In fact in June of 2003 did you invite Dr. Karron to come
- 16 to NIST for a workshop?
- 17 THE COURT: I don't see the relevance of that either,
- 18 so I'm going to rule the objection sustained. Let's go ahead
- 19 with this case.
- 20 Q. Well, you had sent a letter, Exhibit 30 --
- 21 THE COURT: You can make an application later.
- 22 Q. Exhibit 30, you sent a letter in on April 16 outlining
- 23 problems that you were having with Dr. Karron and CASI,
- 24 correct?
- 25 A. I don't know. To whom did I send this letter? Oh, you SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR5 Lide - cross

1 mean the one to the grants office?

- 2 Q. Right.
- 3 A. OK. No, all we said was we were having trouble reconciling
- 4 the year one actuals, and we were asking for an auditor's help.
- 5 Many of our audits -- in fact the majority of our audits have
- 6 very satisfactory endings. So, we did not say we were having
- 7 trouble with the company or Dr. Karron. We said we were having
- 8 trouble reconciling year one actuals. To me that's a big
- 9 difference.
- 10 Q. Well, on June 27 the grant was suspended, correct?
- 11 A. Correct.
- 12 Q. And that was on your recommendation, correct?
- 13 A. We recommended that, yes, that is correct.
- 14 Q. And four days earlier, before you made that recommendation,
- on June 23, 2003 you invited Dr. Karron to a NIST workshop the
- 16 24th and 25th of June.
- 17 MR. KWOK: Objection. Correct?
- 18 THE COURT: I will allow the question.
- 19 A. Certainly, but they're mutually exclusive. At the time we
- 20 invited him, we did not know -- we did not have the information
- 21 that would cause us to suspend the award.
- 22 Q. What did you acquire between June 25 and June 27 that you
- 23 didn't have before?
- 24 A. Some information from the government auditor that he had
- 25 not satisfied a requirement of the grant.

8637KAR5 Lide - cross

- 1 Q. And you got that in writing?
- 2 A. I don't recall. I suspect -- I know there was a phone
- 3 call. There is probably an e-mail trail also. I know our
- 4 recommendation to the grants office to suspend was in writing.
- 5 THE COURT: That was when?
- 6 THE WITNESS: There is an e-mail that I'm sure someone
- 7 in this courthouse has. It was like maybe June 26.
- 8 THE COURT: Well, you wrote a letter.
- 9 THE WITNESS: No, I sent an e-mail, sir. It was about
- 10 June 26th. It was like the day of the suspension, perhaps the
- 11 day before.
- 12 Q. And the day before that you invited him to speak on behalf
- of NIST, right?
- 14 A. Absolutely. We didn't have the information that would
- 15 cause us any reason to suspend.
- 16 Q. Now, are these grants on a cash or an accrual basis?
- 17 A. Are they a cash --
- 18 Q. In other words, are you familiar with the difference
- 19 between cash and accrual?
- 20 A. I'm afraid not. I'm a technical person. Sorry.
- Q. OK. Now, at the time that the grant was suspended on June
- 22 27, 2003, are you aware whether or not Dr. Karron had
- 23 outstanding debts that he had incurred on behalf of the ATP
- 24 project?
- 25 A. I would have no knowledge of that, sir.

8637KAR5 Lide - cross

1 Q. And in fact Dr. Karron then communicated with Marilyn

- 2 Goldstein?
- 3 A. OK. She was the grants --
- 4 Q. Are you aware of that?
- 5 A. He should. She is our grants officer. She had signature
- 6 authority at the time for every amendment and his award, and
- 7 that would be very appropriate for him to communicate with her.
- 8 Q. And during all this time, in August and September, he is
- 9 attempting --
- 10 THE COURT: What year?
- MR. RUBINSTEIN: September of '03.
- 12 Q. August, September, October '03 he is attempting to get the
- grant restarted, correct?
- 14 A. That was his intent, to the best of our knowledge, correct.
- 15 Q. And he attempted to get in touch with you, correct?
- 16 A. Yes.
- 17 Q. And to have a meeting with you, correct?
- THE COURT: With you?
- 19 THE WITNESS: I guess. I don't recall that. If there
- is an e-mail, then, yes, that's true.
- 21 THE COURT: Well, did you get a letter or an e-mail
- 22 from him during that time, or are you answering you as regards
- 23 to the agency? It's important to make a distinction.
- 24 THE WITNESS: You as an agency I can attest got
- 25 communication. I got communication personally; I'm not sure SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR5 Lide - cross

- 1 whether it was a phone call or an e-mail.
- 2 THE COURT: A communication to --
- 3 THE WITNESS: To work together to restart the grant,
- 4 which is of course what we would like to do. Our goal is to
- 5 make these grants successful, yes, sir.
- 6 Q. In fact, ma'am, on August 11, '03 Dr. Karron sent you and
- 7 Jayne an e-mail requesting to schedule a phone conference to
- 8 restart the grant.
- 9 THE COURT: Is that the question?
- 10 MR. RUBINSTEIN: Yes.
- 11 A. I don't recall the date, but, as I said, I had
- 12 communication with Dr. Karron, as did Jayne, on what to do to
- 13 restart the grant.
- 14 Q. Isn't it a fact that you received a communication on
- 15 September 4, '03 from Mark Stanley -- the acting director at
- 16 that time, and now the director of the project -- to you saying
- 17 that Dr. Karron wants a quick fix on a very complicated
- 18 problem? And you responded you will brief him?
- 19 A. I don't remember the words quick fix, but I do remember an
- 20 e-mail from Mark Stanley and a subsequent meeting.
- 21 THE COURT: Subsequent meeting between whom?
- 22 THE WITNESS: Between Mark Stanley and the project
- 23 team. Myself, Jayne Orthwein and either Hope Snowden and/or
- 24 Marilyn Goldstein or both.
- THE COURT: Was Dr. Karron present?

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8637KAR5 Lide - cross

1 THE WITNESS: No, this was an internal NIST meeting.

- 2 THE COURT: All right.
- 3 O. Did Mark Stanley ask you for advice whether or not he
- 4 should meet with Dr. Karron on September 4, 2003?
- 5 A. I don't remember Mark Stanley asking me whether he should
- 6 meet or not. And we don't make those decisions for the
- 7 director, we just brief the director. So that would be his
- 8 decision after the briefing.
- 9 Q. And isn't it a fact that on October 14, 2003 Dr. Karron
- 10 sent you and Jayne Orthwein an e-mail asking when can we talk?
- 11 A. OK.
- 12 Q. Is that a fact?
- 13 A. We did have multiple communication. I'm sorry, I don't
- 14 remember the exact dates.
- 15 Q. But in fact the multiple communications were all Dr. Karron
- 16 asking you if he could sit down and talk to you about getting
- 17 the grant restarted, correct?
- 18 A. I do believe those communications were answered by us also.
- 19 Q. But is it a fact, ma'am, that he kept --
- 20 THE COURT: Were you stonewalling him?
- 21 THE WITNESS: No, we certainly were not, sir. Our
- 22 goal is to help these projects succeed, and that's why I am
- 23 sure we answered the communications.
- Q. Did you ever meet him?
- 25 A. Did we meet him after that? No, we did not meet him.

SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR5 Lide - cross

1 THE COURT: Did you have a telephone conference.

- THE WITNESS: I am sure we would have either e-mail
- 3 exchanges or telephone conferences or tell him to whom to go,
- 4 which at that point would have been the grants office.
- 5 THE COURT: It wasn't in your bailiwick; it was the
- 6 grants office?
- 7 THE WITNESS: That is correct. At that point it was
- 8 out of my hands and Jayne's hands, and it would have been in
- 9 the grants office that this would have to be resolved.
- 10 Q. In fact, the internal process of audit resolution was
- 11 stopped on this case.
- 12 A. That is not my department.
- 13 Q. But that's what happened. Whoever's department it was, the
- 14 civil audit resolution was stopped.
- MR. KWOK: Objection.
- 16 THE COURT: Do you have personal knowledge of that?
- 17 THE WITNESS: No, I don't because I don't do audit
- 18 resolutions.
- 19 THE COURT: I'm just asking --
- THE WITNESS: Yes, sir.
- 21 Q. Isn't it a fact --
- 22 THE COURT: The jury is to disregard the question
- 23 until we get an answer. This witness is apparently not in a
- 24 position to answer that.
- Q. Let me show you what's been marked for identification as SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR5 Lide - cross

1 Government Exhibit 3501-FF and ask you to review this document.

- THE COURT: FF or SS?
- 3 MR. RUBINSTEIN: FF.
- 4 Q. See if that refreshes your recollection as to whether or
- 5 not you had knowledge that the auditing resolution was
- 6 suspended.
- 7 A. I was copied on this e-mail, so I guess I did have
- 8 knowledge. It was not my responsibility, so I didn't act on
- 9 it.
- 10 THE COURT: What's the date?
- 11 THE WITNESS: Friday, October 1, 2004.
- 12 MR. RUBINSTEIN: I offer that into evidence, your
- 13 Honor, Defendant's Exhibit B.
- 14 THE COURT: Defendant's Exhibit B is admitted in
- 15 evidence.
- MR. KWOK: No objection.
- 17 (Defendant's Exhibit B received in evidence)
- 18 THE COURT: Do you want to publish it?
- 19 MR. RUBINSTEIN: I will read a portion of it, your
- 20 Honor. This is an e-mail from Rachel Garrison to Angela
- 21 McInnerny, Marilyn Goldstein, cc'd to a number of people,
- 22 including Ms. Lide, and it says, "Additionally, please do not
- 23 proceed with audit resolution for CASI. It's extremely
- 24 important that a bill not be generated for the funds that CASI
- 25 misappropriated from the award."

8637KAR5 Lide - cross

- I have no further questions, your Honor.
- THE COURT: All right. Redirect.
- 3 MR. KWOK: Thank you, your Honor.
- 4 REDIRECT EXAMINATION
- 5 BY MR. KWOK:
- 6 Q. Ms. Lide, Mr. Rubinstein asked you a couple of questions at
- 7 the beginning of his cross-examination about a list of names.
- 8 Do you remember that line of questioning?
- 9 A. Yes, I do.
- 10 Q. Were any of these people involved in the day-to-day running
- of the CASI grant, the ATP grant awarded to CASI?
- 12 THE COURT: As far as you know.
- 13 A. I don't remember the whole list, but the three that were
- 14 involved in the day-to-day would be Jayne Orthwein, myself and
- 15 Hope Snowden. I don't believe they were on your list.
- 16 Q. Ms. Lide, who had sole signatory authority at CASI while it
- was receiving the ATP grant?
- 18 A. Dr. Karron.
- 19 Q. Did any of his business managers or auditors or bookkeepers
- 20 have signatory authority at any point?
- 21 A. No, we never got documentation to that, no.
- 22 Q. Ms. Lide, do you remember Mr. Rubinstein's questions about
- 23 the title 48 of the Code of Federal Regulation, 48 CFR?
- 24 A. Um-hum.
- Q. And he asked you about certain questions about contract SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR5 Lide - redirect

1 costs being able to be paid out of ATP funds. Do you remember

- 2 that?
- 3 A. I think so.
- 4 MR. KWOK: If we could publish to the jury what's
- 5 already in evidence as Government Exhibit 4, page 6.
- 6 I'm sorry. I gave the wrong number. It's Government
- 7 Exhibit 1, page 6.
- 8 THE COURT: I can't read it. Is this in the jury
- 9 book?
- 10 MR. KWOK: I believe so, your Honor.
- THE COURT: Page 6?
- 12 MR. KWOK: If we could zoom into the top of paragraph
- 13 5.
- 14 Q. Could you read us the first sentence after just the second
- 15 heading?
- 16 A. "Regardless of whether they are allowable under the federal
- 17 cost principles, the following are unallowable under ATP:"
- 18 Q. What does the first of that phrase mean, "Regardless of
- 19 whether they are allowable under the federal cost
- 20 principles..."?
- 21 A. It means what's stated here overrules any other federal
- 22 cost principles.
- 23 Q. What in fact are the ATP rules regarding pregrant costs?
- 24 A. We do not pay any what we call sunk costs, which are costs
- incurred before the start of the grant.

8637KAR5 Lide - redirect

1 Q. And on what occasions did you tell grant recipients that

- 2 rule, that you do not pay for pregrant costs?
- 3 A. That's told at bidders' conferences, via phone calls, in
- 4 the kick-off meeting, on our website. It's repeated.
- 5 Q. Ms. Lide, do you remember Mr. Rubinstein asking you about
- 6 the \$60,000 some odd dollars that Dr. Karron allegedly put into
- 7 CASI after the --
- 8 A. Yes, correct.
- 9 Q. Do you have any personal knowledge about what happened
- 10 there?
- 11 A. It is my -- I know that the grants office said that was not
- 12 an acceptable way to do it.
- MR. RUBINSTEIN: I'm going to object. The question is
- 14 do you have any personal knowledge.
- 15 THE COURT: Objection sustained.
- 16 Q. Do you have any personal knowledge?
- 17 A. Yes, I do. The grants office said it was not acceptable,
- 18 it did not meet --
- 19 MR. RUBINSTEIN: I object to that and move to strike
- 20 it. It's hearsay.
- 21 THE COURT: Objection sustained, whatever the grants
- 22 office said. The jury is instructed to disregard the answer.
- 23 Q. Aside from what you might have heard from other people, do
- you have any other personal knowledge about the \$60,000
- 25 infusion of cash into CASI?

- 1 A. According to ATP rules --
- THE COURT: No, no.
- 3 A. I have personal knowledge that it would not be accepted
- 4 because it was not accounted for for the ongoing research or
- 5 project.
- 6 Q. Miss Lide, did Dr. Karron or CASI ever get an approved
- 7 budget revision to allow so-called preparation costs, site
- 8 preparation costs?
- 9 A. No, no.
- 10 Q. How about any other renovation costs?
- 11 A. No. There was only the one approved budget that we have
- 12 discussed several times in December of '01. That was the only
- 13 revision to the budget that was approved.
- 14 Q. And what is the nature of those changes again to the
- 15 budget?
- 16 A. There were minor changes in equipment. It added a new line
- 17 to materials and supplies. It reduced salaries and therefore
- 18 fringe benefits but upped subcontracts.
- 19 THE COURT: That exhibit is what?
- 20 THE WITNESS: 22 I believe, if I remember. Yes, it's
- 21 22, sir.
- 22 MR. KWOK: If we could put up Government Exhibit 2,
- 23 page 3. If we could zoom into the top of paragraph 9. If you
- 24 could cut that in half so we could blow it up.
- Q. Directing your attention to subparagraph A, what word is SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR5 Lide - redirect

- 1 underlined there?
- 2 THE COURT: Subparagraph A of paragraph 9?
- 3 MR. KWOK: Yes, 9A.
- 4 THE COURT: All right.
- 5 Q. What word is underlined in that paragraph?
- 6 A. Annual.
- 7 Q. What does that say to you?
- 8 A. That the 10 percent refers to the total annual budget, not
- 9 the overall budget over the three years.
- 10 MR. KWOK: If we could put up Government Exhibit 4,
- 11 page 7. Sorry, I have the wrong page again. It's page 11
- 12 actually.
- 13 THE COURT: Of what?
- 14 MR. KWOK: It's page 11 of Government Exhibit 4.
- 15 THE COURT: Is that in the jury binder, or is that --
- 16 MR. KWOK: No, it's not, but it's now displayed on the
- 17 screen.
- 18 THE COURT: All right.
- 19 Q. Ms. Lide, do you remember Mr. Rubinstein asking you about
- the second bullet point?
- 21 A. Yes.
- 22 Q. And you said that it was taken out of context --
- 23 A. Yes.
- Q. -- what he was trying to say. What were you trying to
- 25 explain to us?

8637KAR5 Lide - redirect

1 A. I was trying to explain that several slides earlier had

- 2 said that any change in the budget had to be approved in
- 3 advance. What that is referring to is the overall project.
- 4 At the end of each year your technical goals might
- 5 change slightly. You might realize in subsequent years that
- 6 your estimated budget for year two and three were not correct,
- 7 and this is saying this is a good time to review that. In
- 8 fact, before we renew the proposals -- before we renew the
- 9 award and add year two, we ask if there are any such changes,
- 10 and that's to what that is referring.
- 11 Q. Just to be clear, the second bullet point there is not
- overruling the prior approval requirement.
- 13 A. No.
- MR. RUBINSTEIN: Objection to the leading.
- 15 THE COURT: What budget is contemplated by that second
- 16 bullet point?
- 17 THE WITNESS: It means look at your three-year budget,
- 18 and if you anticipate changes in year two or year three, this
- is a good time to ask for approval of a new budget.
- 20 THE COURT: Is that gone into in the original meeting
- 21 with the grantee?
- 22 THE WITNESS: That's how -- this is not my slide. I
- 23 do not do this part of the presentation, but that's as I
- 24 interpret that. Several slides prior to this --
- 25 THE COURT: You have answered my question.

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1 Q. Let's go back to page 7 of the same exhibit. How does the

- 2 slide that we just looked at relate to this slide?
- 3 A. Well, this slide clearly states prior approval --
- 4 MR. RUBINSTEIN: I object to this as improper
- 5 redirect, your Honor.
- 6 THE COURT: Objection overruled.
- 7 MR. RUBINSTEIN: I didn't ask anything about this.
- 8 THE COURT: I will allow it. But instead of doing
- 9 this, point to the section you are talking about, and then you
- 10 can explain.
- 11 Q. Directing your attention to the second bullet point, how
- 12 does that point relate to the point that we just looked at in
- 13 the previous slide?
- 14 A. That any time during year one that a new budget is
- 15 requested, it must be presented at the time of the request and
- 16 get prior written approval.
- 17 Q. Now, Ms. Lide, do you remember Mr. Rubinstein also asking
- 18 you about the purpose of not allowing ATP grant funds to be
- 19 expended on indirect costs? Do you remember that question?
- 20 A. I do.
- 21 Q. And he asked you whether one of the purposes of that rule
- 22 was so that sometimes a company might spend time on different
- 23 projects? Do you remember that?
- 24 A. I do.
- Q. Are there any other purposes aside from that that ATP does SOUTHERN DISTRICT REPORTERS, P.C.

1 not pay for indirect costs? What was your understanding as to

- 2 why ATP does not pay for indirect costs?
- 3 A. Well, the first understanding is that that is the way that
- 4 a single company cost shares with the U.S. government.
- 5 The second understanding is that if the company has no
- 6 indirect costs to share, it may not be a viable company.
- 7 And the third reason would be that any company, no
- 8 matter how small, engages in other activities than the ATP
- 9 project. For example, in CASI's case they were looking for
- 10 funding from other entities, that would be activities outside
- 11 of the ATP project.
- 12 Q. Ms. Lide, let's go back to Government Exhibit 4. You
- 13 remember Mr. Rubinstein showing you the font at the upper
- 14 left-hand corner of the slide and you were trying to explain?
- 15 A. I do.
- 16 Q. What is that explanation?
- 17 A. Yes. The explanation is that we work as a team. Two of us
- 18 are from Advanced Technology Program, one of us is from the
- 19 grants office; and because we have different knowledge of parts
- 20 of this grants, we all put these slides together with our
- 21 knowledge. So, the larger font came from the grants person.
- 22 She created her own slides because she has the intimate
- 23 knowledge of that. Those of us in the Advanced Technology
- 24 Program created our own slides using a smaller font. Our goal
- isn't to have the prettiest slide set; it's to give the

- 1 information to the company.
- Q. You remember being asked a question about the "in kind"
- 3 contribution and how it relates to the cost share?
- 4 A. Yes, I do.
- 5 Q. You remember him asking you about the limit that can be
- 6 done?
- 7 A. Yes.
- 8 MR. KWOK: May I approach, your Honor?
- 9 THE COURT: Yes, you may.
- 10 Q. I am showing you a document to see if that refreshes your
- 11 recollection.
- 12 MR. RUBINSTEIN: I object. She didn't indicate that
- 13 she needs it.
- 14 THE COURT: I don't know what the document -- I
- 15 haven't gotten anything on this.
- 16 (Record read)
- 17 THE COURT: You can show a document to see if it
- 18 refreshes her recollection.
- 19 (Record read)
- 20 THE COURT: You need another question in there,
- 21 Mr. Kwok.
- 22 Q. Do you know the percentage limit where that can be done,
- 23 the "in kind" contribution can be considered as part of the
- 24 cost share?
- 25 A. I believe it is a third, but I would like to be refreshed SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR5 Lide - redirect

- 1 if possible.
- 2 MR. KWOK: Your Honor?
- 3 THE COURT: All right.
- 4 MR. RUBINSTEIN: I think it's inappropriate, your
- 5 Honor. It's absolutely inappropriate.
- 6 THE COURT: She says --
- 7 MR. RUBINSTEIN: They have a document that she never
- 8 saw before. How can she be refreshed?
- 9 THE COURT: I don't know whether it's a document she
- 10 has seen before or not.
- 11 MR. RUBINSTEIN: Well, I think they have to ask her.
- 12 THE COURT: You have to ask her whether she has seen
- 13 this document before.
- MR. KWOK: Maybe a few questions, your Honor.
- 15 THE COURT: You can show her the document and ask her
- if she has seen it before. She can't tell unless she looks at
- 17 it.
- 18 MR. RUBINSTEIN: He should show her the first page
- 19 only.
- THE COURT: All right, just the first page.
- 21 THE WITNESS: Yes, I have seen that document.
- 22 THE COURT: All right. Let her look through the
- document. Let her look through the document.
- 24 THE WITNESS: I should have confidence in myself. The
- 25 total value of any "in kind" contributions used to satisfy the

8637KAR5 Lide - redirect

1 cautionary requirement may not exceed 30 percent of the

- 2 nonfederal share of the total project costs. And I had said a
- 3 third.
- 4 THE COURT: You remember that of your own knowledge,
- 5 not just reading it.
- 6 THE WITNESS: No, no, sir, I answered -- I believe you
- 7 would find it -- I said I believed it was a third, so ...
- 8 Q. Ms. Lide, you remember Mr. Rubinstein asking you questions
- 9 about multiple communications to NIST, including yourself, from
- 10 Dr. Karron?
- 11 A. I do.
- 12 Q. After the grant was suspended, what was the reason that you
- 13 yourself stopped meeting with him?
- 14 A. At the beginning -- we were instructed by our general
- 15 counsel to stop meeting with him after the suspension of the
- 16 award.
- MR. KWOK: May I approach, your Honor?
- THE COURT: Yes, you may.
- 19 Q. I am showing you what's been marked as Defendant's Exhibit
- 20 I believe 2, 3501-FF?
- DEPUTY COURT CLERK: That's B.
- THE COURT: B as in boy.
- 23 Q. Ms. Lide, Mr. Rubinstein asked you a moment ago to read a
- 24 portion of that e-mail. Can you read the e-mail in its
- 25 entirety?

8637KAR5 Lide - redirect

1 THE COURT: Actually what he read -- he read a portion

- 2 of it.
- 3 Q. He read a portion of it. Can you read the entirety of that
- 4 e-mail?
- 5 A. Certainly. The date is October 1, 2004. "The Department
- 6 of Justice has formally initiated a grand jury investigation
- 7 regarding the NIST ATP award made to Computer Aided Surgery.
- 8 In order to ensure that DOJ and the Inspector General's office
- 9 are able to complete a thorough and timely investigation, we
- 10 are requesting that all NIST" -- "all" is all in caps -- "NIST
- 11 personnel cease contact with Computer Aided Surgery (CASI), Dr.
- 12 Karron and all CASI representatives. Inquiries from those
- 13 parties should be directed to myself or SA Kirk Yamatani.
- 14 Additionally" --
- 15 Shall I continue?
- 16 O. Yes.
- 17 A. "Additionally please do not proceed with the audit
- 18 resolution for CASI. It is extremely important that a bill not
- 19 be generated for the funds that CASI misappropriated from the
- 20 award. Please contact me if there are any further concerns or
- 21 questions. I look forward to working with all of you over the
- 22 next few months. Thank you."
- Q. And who wrote that e-mail?
- 24 A. Rachel A Garrison, special agent.
- THE COURT: For the Department of Commerce?

SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR5 Lide - redirect

1 THE WITNESS: Sorry. Yes, United States Department of

- 2 Commerce.
- 3 O. And do you see Rachel Garrison in this courtroom?
- 4 A. I do.
- 5 Q. Can you point her out?
- 6 A. She is at the front table with a dark suit and a blue
- 7 blouse under it.
- 8 MR. KWOK: No further questions.
- 9 THE COURT: Recross.
- 10 MR. RUBINSTEIN: Yes, your Honor.
- 11 RECROSS EXAMINATION
- 12 BY MR. RUBINSTEIN:
- 13 Q. Is it fair to say that --
- MR. KWOK: Objection.
- 15 THE COURT: Let's rephrase the question.
- 16 Q. Thank you, Judge.
- 17 Are you -- is cofunding part of your job? Are you
- involved in cofunding and advise on cofunding?
- 19 THE COURT: I don't --
- 20 A. No, I don't believe it is.
- 21 THE COURT: I don't see the relevance of this.
- 22 MR. RUBINSTEIN: He just asked her on cross. He
- 23 showed her a document.
- Q. Didn't you say when you first answered that question that
- 25 it was one third -- that one third?

SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR5 Lide - recross

- 1 A. It is our responsibility to the best of our knowledge to
- 2 understand the rules and criteria and to advise our recipients,
- 3 and when in doubt our expert is our grant specialist who works
- 4 with us on the project.
- 5 Q. Isn't it fair to say that your answer was, before you were
- 6 shown the document, that it's about a third of the budget?
- 7 A. No, definitely not of the budget, absolutely not. Of the
- 8 cost share.
- 9 Q. Now?
- 10 THE COURT: The cost share being the costs put up by
- 11 the grantee?
- 12 THE WITNESS: That is correct, sir. Yes.
- Q. Now, sunk cost is a term you used, correct?
- 14 A. Um-hum.
- 15 Q. Is that right?
- 16 A. Correct.
- 17 Q. Is that what you said?
- 18 A. Correct, we use the term sunk cost.
- 19 Q. And that is costs that a grantee spends before they
- 20 actually get the grant money.
- 21 A. Before the start of the grant.
- 22 Q. Before. That they actually spend the money. They paid for
- 23 the expense. They buy a computer on September 29th and they
- 24 pay for that computer that they're going to start using after
- October 1st for the purposes of that grant, that's a sunk cost,

8637KAR5 Lide - recross

- 1 right?
- 2 A. If they paid for it, yes, it is a sunk cost. Anything they
- 3 purchase, yes.
- 4 Q. You just said they paid for?
- 5 A. Or, well, if they order it. They can't order it before the
- 6 start of the grant and then charge ATP. They ordered it before
- 7 the grant.
- 8 Q. Isn't it a fact they can't pay for it before the grant and
- 9 get reimbursed, but if they charge it and pay for it after they
- 10 get the money, then that is acceptable?
- 11 A. It certainly wouldn't be, in my opinion, but the grants
- 12 office would have to answer that question more accurately.
- 13 It's my understanding that it was entered into before the start
- 14 of the grant and therefore regardless of when you paid for it
- 15 it would be a sunk cost.
- 16 Q. The government showed you Government Exhibit 4, page 11.
- 17 Could we have that up, please?
- 18 MR. RUBINSTEIN: It's the one that the government
- 19 showed the witness on redirect.
- 20 THE COURT: That's what you want up, Mr. Rubinstein?
- MR. RUBINSTEIN: Yes.
- 22 THE COURT: All right.
- 23 Q. Anywhere in that exhibit does it address a three-year
- 24 budget?
- 25 A. That's what's meant by a revised budget.

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8637KAR5 Lide - recross

- 1 THE COURT: But does it state it in the --
- THE WITNESS: No, it does not state a three-year
- 3 budget.
- 4 Q. Does it specifically say the costs of each year?
- 5 A. Yes.
- 6 Q. Now you were asking for the actual costs of CASI in order
- 7 to help CASI get a revised budget, correct?
- 8 A. Yes.
- 9 Q. And anywhere in your exhibit 4, the slide presentation, is
- 10 there anything about cofunding and equipment?
- 11 A. I would be happy to go through this.
- 12 Well, certainly the page that says "adhere to terms
- and conditions and related award documents," lists things that
- 14 would address equipment.
- 15 The prior approval says sole source contracts over
- 16 \$100,000. That would relate to equipment.
- 17 The next slide says report changes and equipment use.
- 18 That certainly affects equipment.
- 19 The procurement standards relates to equipment and how
- 20 one purchases it with competing procurements and documenting.
- 21 The budget slide, of course equipment plays a big role
- 22 in the budget, especially in a project such as this.
- The audit would have to audit the equipment.
- 24 An audit problem is estimated versus actual costs
- 25 requested or failure to document cost share. Both of those

8637KAR5 Lide - recross

- 1 could -- a price-based value of contribution, all of those
- 2 could relate to equipment, if that's what's in question.
- 3 And I suspect it won't be under the technical and
- 4 business project management, so --
- 5 Q. So, it's fair to say there is no place in your slide
- 6 presentation that says you can only use equipment up to 30
- 7 percent as to nonfederal expenses, right? There is nothing
- 8 that says that.
- 9 A. Not in that document, but it occurs in many other
- 10 documents.
- 11 Q. Not in the slide show though?
- 12 A. Not in the slide show directly.
- 13 Q. And the government asked you questions about Defendant's
- 14 Exhibit B. You received this e-mail on October 4, 2004. Did
- 15 you ever tell Dr. Karron in all the times he e-mailed you or
- 16 called you that you can't speak to him and that he should be
- directed to either Rachel Garrison herself or special agent
- 18 Kirk Yamatani? Did you ever tell Dr. Karron that that's what
- 19 you were advised to do?
- 20 A. Those were not my instructions. My instructions were
- 21 inquiries from Dr. Karron should be referred to those special
- 22 agents. My instructions were to cease contact. And I follow
- 23 instructions.
- Q. Did you tell him you can't talk to him month after month?
- 25 THE COURT: Did you have any of these inquiries to SOUTHERN DISTRICT REPORTERS, P.C.

8637KAR5 Lide - recross

those people? THE WITNESS: Yes. My instructions were to send e-mail --THE COURT: But did you follow your instructions? THE WITNESS: Absolutely to the letter. THE COURT: All right. THE WITNESS: Yes. (Continued on next page)

863ZKAR6 Lide - recross

- 1 BY MR. RUBINSTEIN:
- 2 Q. Did you ever notify Dr. Karron that you had been instructed
- 3 to send all his inquiries to Agents Garrison and Yamatani, if
- 4 I'm pronouncing his name correctly?
- 5 A. I'm a government employee and I was following my
- 6 instructions from the U.S. Government.
- 7 Q. So you had Dr. Karron keep calling you and begging you to
- 8 see if he could get his grants restarted; right?
- 9 MR. KWOK: Objection.
- 10 A. No.
- 11 THE COURT: Objection sustained. Jury is instructed
- 12 to disregard the question.
- 13 You're excused. Next witness, bring him on.
- 14 MR. EVERDELL: Your Honor, the government calls Hope
- 15 Snowden.
- 16 HOPE DENISE SNOWDEN,
- 17 called as a witness by the government,
- having been duly sworn, testified as follows:
- 19 DIRECT EXAMINATION
- 20 BY MR. EVERDELL:
- MR. EVERDELL: May I proceed, your Honor?
- THE COURT: Yes.
- Q. Good afternoon, Ms. Snowden.
- 24 A. Good afternoon.
- 25 Q. Where do you work?

863ZKAR6

Snowden - direct

- 1 A. I work at the National Institute of Standards and
- 2 Technology in Gaithersburg.
- 3 Q. Is that sometimes called NIST?
- 4 A. Yes.
- 5 Q. For short? And is NIST part of the federal government?
- 6 A. Yes.
- 7 Q. And what part?
- 8 A. The Department of Commerce.
- 9 Q. What is your title at NIST?
- 10 A. Grants specialist.
- 11 Q. And how long have you been a grants specialist?
- 12 A. About eight-and-a-half years.
- 13 Q. What do you do as a grants specialist?
- 14 A. I administer grants.
- 15 Q. So can you describe a little bit what you do, your
- 16 responsibilities?
- 17 A. I do like budget revisions. I administer -- I administer
- 18 the grants when -- pertaining to the rules and regulations. I
- 19 explain to the grantees what are allowable and unallowable
- 20 costs.
- 21 Q. Do you have any responsibilities concerning budgets for
- 22 grants?
- 23 A. Yes. I review the budget for the grants, although at the
- 24 end of the day my supervisor, her signature her -- with an
- amendment and her official signature, that's how our budgets

 SOUTHERN DISTRICT REPORTERS, P.C.

863ZKAR6 Snowden - direct

- 1 are approved.
- Q. Do you know B. J. Lide or Betti Jo Lide?
- 3 A. Yes, I do.
- 4 Q. And who is that?
- 5 A. They're program managers, and we partner up with ATP
- 6 grants.
- 7 Q. How does your job differ from Ms. Lide's job?
- 8 A. B. J. is on a more technical aspects of the grants. I'm on
- 9 more than administrative and like budget analysis, and my
- 10 office does all the approvals that have to be authorized and
- 11 signed for by the grant officer.
- 12 Q. What did you do before becoming a grant specialist?
- 13 A. I was a procurement analyst for United States.
- 14 Q. And how long did you do that for?
- 15 A. Nine years.
- 16 Q. Are you familiar with the advanced technology program
- 17 grant?
- 18 A. Yes.
- 19 Q. Or ATP grants?
- 20 A. Yes.
- 21 Q. Have you been involved as a grants specialist with ATP
- grants in the past?
- 23 A. Yes, I have.
- 24 Q. And about how many ATP grants have you been a grant special
- 25 list for?

863ZKAR6 Snowden - direct

- 1 A. Well, over 60.
- Q. In your capacity as a grants specialist for the ATP grants,
- 3 are you familiar with the rules governing the ATP grants?
- 4 A. Yes, I am.
- 5 Q. And are you familiar with the rules governing government
- 6 grants, in general?
- 7 A. Yes.
- 8 Q. How are you familiar with those rules?
- 9 A. I'm a grants specialist and, therefore, part of my position
- 10 of my job is to be familiar with those rules and regulations
- 11 that govern the grants.
- 12 Q. And those rules include spending rules?
- 13 A. Spending rules, unallowable and allowable costs.
- 14 Q. All right. Ms. Snowden, did there come a time when you
- 15 were involved in handling, excuse me, in handling an ATP grant
- 16 awarded to Computer Aided Surgery Incorporated or CASI?
- 17 A. Yes.
- 18 Q. And who is the head of CASI?
- 19 A. Dr. Karron.
- Q. Do you see Dr. Karron here in the courtroom?
- 21 A. Yes, I do.
- 22 Q. Would you please point him out and describe an article of
- 23 clothing he's wearing?
- 24 A. With the glasses on, tie, and jacket.
- MR. EVERDELL: May the record re --

863ZKAR6 Snowden - direct

1 MR. RUBINSTEIN: I concede she's identified --

- 2 A. He has --
- 3 MR. RUBINSTEIN: -- Dr. Karron.
- 4 A. He has something in his hand -- there he is, has a pony
- 5 tail. That's him, yes.
- 6 MR. EVERDELL: May the record so reflect the witness
- 7 has identified the defendant?
- 8 THE COURT: The record will reflect the witness has
- 9 identified the defendant.
- 10 Q. Ms. Snowden -- excuse me, your Honor.
- 11 Ms. Snowden, what position did the defendant occupy
- 12 within CASI?
- 13 A. He's the president.
- 14 Q. And when did you first meet the defendant?
- 15 A. I met him November 2001.
- 16 Q. And what was the occasion for that meeting?
- 17 A. He came to NIST, him and his associates, to what we call a
- 18 kickoff meeting. That's when you're awarded a federal funded
- 19 grant, you come to our location -- well, usually we go to your
- 20 location. But since 9/11 they came to our location. And we
- 21 have a -- give a presentation, and we go through rules and
- 22 regulations that govern the grants and go over what their
- 23 responsibilities are, our responsibilities to them, and then
- 24 they give us like a presentation of what they expect to
- 25 accomplish throughout the proposal.

863ZKAR6 Snowden - direct

- 1 Q. And you say that's a kickoff meeting?
- 2 A. It's called a kickoff.
- 3 O. And what grants did Dr. Karron and CASI receive at that
- 4 point?
- 5 A. A federal funded grant with federal funds.
- 6 Q. Was it an ATP grant?
- 7 A. Through ATP, yes, ATP program.
- 8 Q. And when was that grant approved?
- 9 A. The grant was approved in October 2001.
- 10 Q. How much funding was authorized for that grant?
- 11 A. \$2 million.
- 12 Q. And how is the two million going to be disbursed?
- 13 A. Over three year period, the first year being 800,000, and
- 14 second year 600,000 and third year 600,000.
- 15 Q. And where did money come from that funded the grant?
- 16 A. Federal appropriations, federal -- it's a federal grant.
- 17 Q. Now, you mentioned kickoff meeting before. When, again,
- 18 did that kickoff meeting occur?
- 19 A. It was in November 2001.
- 20 Q. So how long after the grant was approved did the kickoff
- 21 meeting happen?
- 22 A. Probably within like six weeks.
- 23 Q. Now, prior to the kickoff meeting, did you have any
- 24 conversations with anyone from CASI?
- 25 A. Yes, yes.

863ZKAR6 Snowden - direct

- 1 Q. Who did you have conversations with?
- 2 A. Dr. Karron and his associate, Lee Gurfein.
- 3 Q. And who is Lee Gurfein?
- 4 A. Lee Gurfein, under this proposal, was an administrator
- 5 under this proposal.
- 6 Q. And what does an administrator do?
- 7 A. Usually they do all the administrative work. He would call
- 8 me to ask me questions for about allowable and unallowable
- 9 costs, just about any changes or changes that they propose;
- 10 just questions.
- 11 Q. Is he the point of contact?
- 12 A. He was the point of contact, yes.
- 13 O. All right. Starting first with your conversations with Lee
- 14 Gurfein, did he contact you or did you contact him?
- 15 A. He contacted me.
- 16 Q. And why did he contact you?
- 17 A. He contacted me to ask me about unallowable and allowable
- 18 costs. He -- for example --
- 19 MR. RUBINSTEIN: Objection to the hearsay, your Honor.
- 20 MR. KWOK: Your Honor, these are questions, they're
- 21 not statements.
- THE COURT: Objection sustained as to why he contacted
- 23 her. She can state what he said in the conversation and what
- she said in the conversation, but she can't testify as to what
- 25 is in his mind.

863ZKAR6 Snowden - direct

- 1 MR. EVERDELL: Yes, your Honor. Understood.
- Q. All right, Ms. Snowden, let me ask you this question. You
- 3 said he contacted you, is that right?
- 4 A. Yes.
- 5 Q. Did you two have a discussion?
- 6 A. Yes.
- 7 Q. What questions did he ask you, if any, during that, those
- 8 conversations?
- 9 A. Was he allowed to pay for rent and utilities, with the ATP
- 10 federal funded grant.
- 11 Q. And rent for what, rent and utilities for what?
- 12 A. For the condo in which the -- at this point I guess CASI,
- 13 the company, was being housed.
- 14 Q. And whose condo was that?
- 15 A. Dr. Karron's condo.
- 16 Q. And what was your response to the question, can rent and
- 17 utilities be paid for with ATP funds?
- 18 A. No, they're unallowable costs.
- 19 Q. And why is rent not, and utilities not allowable cost?
- 20 A. For one thing, they're considered indirect costs, and
- 21 they're -- indirect costs for us is general and administrative
- 22 costs like water, electricity, heat, something that ATP and
- federal funds we do not pay for.
- 24 Q. Now, something like rents and utilities be an allowable
- 25 expense under the grant rules if the only project that the SOUTHERN DISTRICT REPORTERS, P.C.

863ZKAR6 Snowden - direct

1 grant was recipient was working on was the project that was

- 2 funded by the ATP money?
- 3 A. No.
- 4 Q. It wouldn't make any difference?
- 5 A. It makes no difference at all.
- 6 Q. What if the defendant was living in the apartment where the
- 7 company was housed, would that make any difference whether
- 8 grant money could be used for rent?
- 9 A. No, not at all.
- 10 Q. All right. Now, turning to your conversations with the
- 11 defendant, did he contact you or did you contact him?
- 12 A. He contacted me.
- 13 Q. And why -- oh, withdrawn, your Honor. Did you two have a
- 14 conversation?
- 15 A. Yes.
- 16 Q. And what did you talk about?
- 17 A. He had the same conversation -- question as Lee Gurfein.
- 18 Q. Which was what?
- 19 MR. RUBINSTEIN: Can we establish a time, your Honor,
- with these conversations?
- 21 THE COURT: Yes. Approximately when did these
- 22 conversations take place, approximately?
- 23 THE WITNESS: Oh, this is -- they first started taking
- 24 place before the kickoff. So that's in October of 2001.
- 25 THE COURT: This is about the rent?

SOUTHERN DISTRICT REPORTERS, P.C.

863ZKAR6 Snowden - direct

1 THE WITNESS: This is about the rent and utilities.

- 2 This is right after he was told that he -- he received the
- documents that he would be receiving this federal fund, and
- 4 then it continued.
- 5 THE COURT: All right. Then the next conversation you
- 6 said that was with Gurfein. What about the conversation
- 7 with --
- 8 THE WITNESS: They --
- 9 THE COURT: -- Dr. Karron?
- 10 THE WITNESS: They both would call me, just --
- 11 THE COURT: Same time?
- 12 THE WITNESS: Yeah. No, like a different day. Like
- 13 Lee would call me one day, and then Dr. Karron would call me
- 14 another day and ask the same exact question.
- 15 THE COURT: They both were all in October?
- 16 THE WITNESS: No. Some were in October, and then
- 17 later on after the kickoff, they continued to call me and ask
- 18 me the same exact questions.
- 19 THE COURT: All right.
- THE WITNESS: Okay.
- 21 Q. All right. Again, just to clarify the conversations with
- 22 the defendant, we discussed your conversations with Lee
- 23 Gerfein, but what did you two discuss, you and the defendant?
- 24 A. We discussed rent and utilities.
- 25 Q. And what specifically did the defendant ask you?

863ZKAR6 Snowden - direct

- 1 A. He asked me were there allowable cost, and I told him over
- 2 and over again, no. He also -- we had a conversation about --
- 3 during this time was 9/11, and the State of New York had told
- 4 them they would give him some space. And I guess, I don't know
- 5 what agreement they had, but since 9/11 they rescinded the
- 6 offer. So, therefore, he was inside of his apartment. I said
- 7 I understand this, but I'm sorry; unfortunately, federal
- 8 funding grants, we do not pay for rent and utilities, so
- 9 therefore, the answer was no, time and time again.
- 10 Q. And about how many times were you contacted about this?
- 11 A. Numerous times. Between Lee and Dr. Karron, they would tag
- 12 taking team. They would both call me and ask the same
- 13 questions like a day apart, and they would consistently get the
- 14 same exact answer.
- 15 Q. What answer was that?
- 16 A. They were unallowable costs and, no, you can not use
- 17 federal funds.
- 18 Q. Did you ever tell the defendant or Lee Gerfein that rent
- 19 and utilities were allowable expenses under the ATP funds?
- 20 A. Never.
- 21 Q. Did you ever approve any rent or rent payment requests from
- the defendant or anybody at CASI?
- 23 A. No, never.
- Q. All right. Aside from calling you with questions, were
- there any resources available to the defendant to instruct him SOUTHERN DISTRICT REPORTERS, P.C.

863ZKAR6 Snowden - direct

1 about the rules governing the expenditure of grants funds?

- 2 A. Yes.
- 3 Q. And what are those?
- 4 A. You have, you have ATP rules. You have a management.
- 5 Under the federal government, you have regulations and the
- 6 regulations you have -- you have to you have to have written
- 7 proper management procedures in place. So, yes you have rules.
- 8 Q. Are there ways that the defendant would be able to access
- 9 these rules at any point?
- 10 A. Yes. There is more than one way. When you receive a grant
- 11 from us when you receive a document, even before you sign it
- 12 say you're going to accept it, we send that document, along
- 13 with all the regulations that govern the award, also there are
- 14 internet, on the internet you can always access them through
- 15 the internet.
- 16 Q. And did you in fact send these regulations to the defendant
- when he was awarded the grant?
- 18 A. Yes.
- 19 Q. I'd like to show you what's already in evidence as
- 20 government exhibit 12, and if we could display that on the
- 21 screen. I know the folders are jumbled, but if you could find
- 22 exhibit 12.
- 23 A. Okay.
- Q. You see that document?
- 25 A. Yes.

863ZKAR6 Snowden - direct

- 1 Q. Do you know what that document is?
- 2 A. Yes.
- 3 Q. What is that?
- 4 A. When a recipient is going to receive a federal fund, they
- 5 will receive this document. This document, it -- basically, it
- 6 tells you to -- it outlines the period of performance and how
- 7 much money you're going to receive, and it also has every
- 8 regulation and rule checked that governs your award.
- 9 Q. And are there regulations and rules that are checked on
- 10 this one?
- 11 A. Yes.
- 12 Q. And is this the one that was sent to Dr. Karron and CASI?
- 13 A. Yes.
- 14 Q. And these checked items, do you see the ones that are
- 15 there?
- 16 A. Yes.
- 17 Q. All right. And they include -- which ones do they include?
- 18 A. They include Department of Commerce, financial assistance
- 19 standards terms and conditions. You have your special award
- 20 conditions, line item budget, 15 CFR part 14, uniform
- 21 administrative requirements for grants and agreements with
- 22 higher -- institutions of hire education hospitals, other
- 23 nonprofit and commercial organizations; 48 CFR part 31,
- 24 contract cost principles and procedures. And then we have
- others. And others are the general terms, conditions of SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 Advanced Technology Program, and you have programs specific
- 2 guidelines for the ATP cooperative agreements with single
- 3 companies.
- 4 Q. And were these documents sent along with the grant award?
- 5 A. Yes.
- 6 Q. And whose signature appears on the bottom of that?
- 7 A. D. B. Karron.
- 8 Q. And in signing that, what is the signatory agreeing to do?
- 9 A. When you sign this, you're -- you're -- by signing this
- 10 document, you simply agree to comply with the awards provisions
- 11 checked below. Upon acceptance of double signed copy, you're
- 12 saying that you're not only signing these, that you're
- 13 accepting them, but you understand these rules and regulations
- 14 that govern your award.
- 15 Q. All right, let's discuss now the kickoff meeting that you
- 16 mentioned before. What is the kickoff meeting?
- 17 A. A kickoff meeting is when the federal Government and the
- 18 program side of the house and the recipient, that the person
- 19 receiving the grants, we come together and we gave a
- 20 presentation. The presentation outlines the rules and
- 21 regulations of the grant, what you expect to receive from us,
- 22 and our responsibilities and your responsibilities to us.
- 23 It also -- also, the grantee is able to give us a
- 24 presentation of what he expects to accomplish in the proposal.
- So, basically, it's a time where we come together you can see SOUTHERN DISTRICT REPORTERS, P.C.

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1 each other face-to-face and, basically, you could talk and be

- 2 more familiar with each other.
- 3 Q. And who attended the kickoff meeting from CASI?
- 4 A. I recall Dr. Karron and Dr. Lee Gerfein -- and Lee Gerfein.
- 5 Q. And who on behalf of NIST was there?
- 6 A. B. J. Lide, Jane Orthwein and myself, Hope Snowden.
- 7 O. And what does the NIST grant office hope to achieve at this
- 8 kickoff meeting?
- 9 A. We hope to give you a nice outline and tell you about the
- 10 rules and regulations. I explain to them every time that I'm
- 11 their liaison for the grants office. I mean, you have these
- 12 rules and regulation. If you don't understand them, don't try
- 13 to interpret them yourself. That's what I'm there for. You
- 14 call me and I'll help you out, and if I don't know the answer,
- 15 I'll definitely go find out what it is.
- 16 Q. What was your role at the kickoff meeting?
- 17 A. I represent the grants office.
- 18 Q. Did you give a presentation there?
- 19 A. Yes, I did.
- 20 Q. All right. I'd like you to look at Government's exhibit 4
- 21 which is in evidence, if you can find that folder?
- 22 THE COURT: You have the full exhibit, is that it?
- 23 MR. EVERDELL: The witness has the full exhibit and I
- 24 will direct her.
- 25 THE COURT: The jury just has the extract.

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- 1 MR. EVERDELL: Jury just has the extracts, that's
- 2 correct, your Honor.
- 3 Q. Do you see that document in front of you?
- 4 A. Yes.
- 5 Q. And what is that document there?
- 6 A. This is a copy of the presentation that I, that I gave at
- 7 the kickoff.
- 8 Q. I'd like you to turn to page six of that document?
- 9 A. Okay.
- 10 Q. Put that up on the screen. I'm not sure the jury has page
- 11 six. You see that page?
- 12 A. Yes.
- 13 Q. Is that part of the presentation you gave?
- 14 A. Yes.
- 15 Q. And what is, what is this slide designed to impart to the
- 16 people present?
- 17 A. This is to reiterate the rules and regulations and as it
- 18 says, terms conditions and regulations that govern this award.
- 19 So I usually go over this slide and tell them that these are
- 20 the rules and regulations that not only govern each one
- 21 supersedes, like you have your special award conditions, your
- 22 ATP general terms and conditions and so forth.
- 23 Q. Did you tell them if they have any questions what they can
- 24 do?
- 25 A. If they have any questions, they have to call me. I'm the SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 grant liaison, call me.
- 2 Q. Can they question you about any questions about the rules
- 3 and regulations that are outlined here?
- 4 A. Yes, yes.
- 5 Q. Is it your job to respond to those questions?
- 6 A. That is my job to respond.
- 7 Q. What, if anything, do you tell the people present at the,
- 8 or did you tell the CASI people present at their kickoff
- 9 meeting about their responsibilities concerning their proposal?
- 10 A. I usually give my spiel, and it's like -- and I tell them,
- 11 I said your proposal's like your Bible; you don't go outside of
- 12 the other guidance of your proposal. Anything outside there,
- 13 you need to have prior approval. So your proposal, you must
- 14 follow it.
- 15 Q. And what specifically did you tell them, if anything, about
- 16 their responsibilities concerning their budget?
- 17 A. The budget that's approved within your proposal, that's
- 18 your own approved budget. Anything outside that, you need,
- 19 prior approved -- you need prior approval. Part of that prior
- 20 approval is never verbal. It always comes in a signed document
- 21 signed by my grant officer.
- 22 Q. All right. So just to be clear, if you want to get prior
- 23 approval -- if you want to get prior approval for a change in
- 24 your budget, can you get it orally?
- 25 A. No.

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1 Q. Have you ever granted something, a change in the budget

- 2 orally?
- 3 A. No.
- 4 Q. So these are written approvals, is that right?
- 5 A. That's it. That's the only how you can get approval.
- 6 THE COURT: This is what you told them at the time of
- 7 the meeting?
- 8 THE WITNESS: Yes.
- 9 Q. I'd like you to look at page 11 of that same exhibit that's
- 10 not in the jury binders, but we have been discussing it. So
- 11 you have to look up on the screen, Ms. Snowden even -- oh, I
- 12 suppose you have a full exhibit. Yes, you can turn to page 11.
- 13 A. Okay, I have it.
- 14 Q. All right. You see that page their?
- 15 A. Yes.
- 16 Q. It says budgets?
- 17 A. Uh-huh.
- 18 Q. Is this part of the presentation that you gave as well?
- 19 A. Yes.
- 20 Q. And you see that second, I guess bullet point, review costs
- 21 at the end of each year and submit a revised budget and
- 22 narrative if changes have occurred or has occurred?
- 23 A. Yes.
- 24 Q. Can you explain what you mean what you mean by that bullet?
- MR. RUBINSTEIN: Objection, your Honor.

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1 THE COURT: Objection sustained. It's what she said

- 2 at the meeting that's binding.
- 3 Q. Did you discuss anything at the meeting about that bullet?
- 4 A. Yes.
- 5 Q. What did you discuss at the meeting about that bullet?
- 6 A. This bullet represents -- every year, just like I said, you
- 7 get over a three year period, you get allotment of money. The
- 8 first year was 800,00, second year 600,000, third year 600,000.
- 9 So this is, this is a commercial -- this is a grant. We expect
- 10 to make changes. So before you allocated your next period of
- 11 funding, we actually look at your budget see if there's going
- 12 to be any changes. And if you need changes, you have to
- 13 request approval of a revised budget. Other than that, the
- 14 budget that was approved is the budget that you have to abide
- 15 by. But if you have changes, you can't request changes.
- 16 THE COURT: Budget for what period of time?
- 17 THE WITNESS: Whenever your grant is instated. Like
- 18 this grant was like October 1st, 2001 until September, so it's
- 19 a year. It's one year. But within, within that year you could
- look at it and say that I see that I want to make changes or I
- 21 need to reallocate money, and you're allowed to request a
- 22 change but you have to get approval and it has to be written
- and has to be signed off by my grants officer, my supervisor.
- 24 THE COURT: But you talked about making -- you told us
- 25 their were three.

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- 1 THE WITNESS: Yeah, three budgets period.
- THE COURT: 800, 600 and 600. How does that relate to
- 3 what's up on the board?
- 4 THE WITNESS: Well, your first year is going to --
- 5 THE COURT: How does that relate to what you told
- 6 people about the three year period?
- 7 THE WITNESS: This is at the end of the year. So,
- 8 basically, the end of the year would be September 30th. So,
- 9 therefore, you should review your budget for the following year
- 10 and see if you need to make changes so you can request an
- 11 approval. And your next year starts October 1. That's when
- 12 you're going get your allocation of your new funds.
- 13 Q. So just to be clear, Ms. Snowden, you're referring to the
- 14 next year's budgets allocation?
- 15 A. Yes.
- 16 Q. -- in this bullet, is that right?
- 17 A. Yes.
- 18 Q. Now, if you're going to make prior changes to the existing
- 19 year's budget that you're operating in, how are those approvals
- 20 going to come, if at all?
- 21 A. It would come still -- you have to request it and it's
- 22 going to come in a written form. My supervisor has to sign off
- 23 on it. You're going to get an amendment that says that we
- 24 approve your revised budget dated October 1st, 2004 and we'll
- 25 send you a signed document, with my supervisor's signature on SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 it.
- Q. Okay. Now I'd like you to look at page seven of the same
- 3 exhibit, which I believe is in the binders for the jury. Pull
- 4 that up. See page seven? You see page seven, Ms. Snowden?
- 5 A. Yes.
- 6 Q. All right. And you see the bullet that says, budget line
- 7 item changes greater than 10 percent of total number approved
- 8 budget for each recipient for each project year?
- 9 A. Yes.
- 10 Q. Did you discuss that item with people present?
- 11 A. Yes, I did.
- 12 Q. And what did you discuss with them about that?
- 13 A. That this bullet means that any line item that is
- 14 10 percent or more, you have to get prior approval and that
- 15 approval will come in a written document signed by the grants
- 16 officer.
- 17 Q. And is that in the existing year's budget that you're
- 18 operating under, you want to make changes to that budget?
- 19 A. Yes.
- 20 Q. All right. I'd like you to turn to page 17 of that exhibit
- 21 as well. See that slide?
- 22 A. Yes.
- 23 Q. Is that part of your presentation as well?
- 24 A. Yes, it is.
- Q. And you see the title relationship between cost share and SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 ATP funds?
- 2 A. Yes.
- 3 O. Did you discuss this issue of cost share with the people
- 4 from CASI?
- 5 A. Yes.
- 6 Q. What did you tell them about cost sharing?
- 7 A. When we explain this slide, it's explained to the extent
- 8 ATP funds are the federal funds. Those are the funds that the
- 9 federal government incorporates into the project.
- 10 Cost share is the funds that the recipient that he
- 11 incorporates into the, to the project. The ATP and the --
- 12 which is the federal funds and the non-federal funds from the
- 13 company, together they totaled the ATP project budget. So base
- them together, that's the full budgets.
- 15 Q. And did CASI have a cost share in their grant?
- 16 A. Yes, they did.
- 17 Q. Do you know if, with respect to cost share, are in kind
- 18 contributions allowed in order to cover the cost share
- 19 requirement?
- 20 A. In kind is allowable if it was incorporated into the
- 21 original proposal and approved in the beginning of the project.
- 22 Q. And do you know what the limit is on whether in kind
- 23 contribution can apply, if they're going to apply?
- 24 A. 30 percent.
- 25 O. And how do you know that?

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- 1 A. They're part of -- they're part of, they're part of the
- 2 regulations under the general terms and conditions of this
- 3 award -- of grant of ATP awards across the board.
- 4 Q. So only 30 percent in kind?
- 5 A. That's it.
- 6 Q. Contribution?
- 7 A. Yes.
- 8 Q. All right. Ms. Snowden, approximately, how many prior
- 9 times before the CASI kickoff meeting did you give this slide
- 10 presentation?
- 11 A. Before CASI, I had probably given this presentation
- 12 probably about six or seven times before CASI.
- 13 Q. Did you do anything differently for the CASI group when you
- 14 gave this presentation?
- 15 A. No, not at all.
- MR. EVERDELL: Your Honor, I notice it's almost four.
- 17 This is probably a good breaking point if you want to break
- 18 here or I can continue if you like?
- 19 THE COURT: Well, let's go a little while. I do have
- 20 a conference that's important, but let's go for a little while
- 21 if you can. We don't -- all the people don't seem to be here
- 22 for that conference.
- 23 MR. EVERDELL: Okay, your Honor. I happen to know I'm
- one of them, so.
- 25 O. All right.

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1 THE COURT: Oh, you're one of them?

- 2 MR. EVERDELL: I'm one of them.
- 3 THE COURT: All right. I forgot that.
- 4 Q. All right. Ms. Snowden, I want to talk to you a little bit
- 5 more about the rules of the ATP grant. Let's talk first about
- 6 the rules concerning fringe benefits, all right. Are you
- 7 familiar with the rules concerning fringe benefits for the ATP
- 8 fund?
- 9 A. Yes.
- 10 Q. All right. I'd like to show you what's already in
- 11 evidence -- oh, and what are fringe benefits?
- 12 A. Fringe benefits are indirect costs.
- MR. RUBINSTEIN: Objection, your Honor.
- 14 THE COURT: What?
- MR. RUBINSTEIN: I object to the witness testifying as
- 16 to what fringe benefits are.
- 17 THE COURT: Well, did you, in your discussion with the
- 18 parties, do you explain what you mean by fringe benefits?
- 19 THE WITNESS: They're detailed in ATP kit that the
- 20 company received, they have an itemized list of what we would
- 21 consider fringe benefits.
- 22 THE COURT: I see. Whereabouts is that?
- 23 THE WITNESS: It's in the prep kit under the budget
- 24 narrative and fringe benefits in the ATP kit. 35 percent or
- 25 more, they have to itemize them and under that they don't, so

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- 1 it was like -- sorry.
- 2 MR. EVERDELL: Your Honor, I'm going to direct the
- 3 witness' attention to the documents. I'm specifically asking
- 4 her to testify about what's in the documents in the regs now.
- 5 I'm not talking about the kickoff meeting.
- 6 THE COURT: All right.
- 7 MR. EVERDELL: Okay.
- 8 THE COURT: Go ahead.
- 9 Q. All right, Ms. Snowden, you said you're familiar with the
- 10 rules concerning fringe benefits, right?
- 11 A. Yes.
- 12 Q. All right. If you could look, please, at Government's
- 13 Exhibit 2, if we could have that up, and page two of that
- 14 exhibit.
- 15 This is the general terms and conditions Advanced
- 16 Technology Aspects Programs, and if we could highlight on the
- 17 left-hand side C(1). You see that line their, that paragraph
- 18 excuse me, C(1)?
- 19 A. Yes.
- 20 Q. All right. And you see where it says, by signing this
- 21 award, the recipient agrees to ensure that only actual costs
- 22 incurred will be charged to the award and that all costs will
- 23 be reasonable, allocable and allowable in accordance with the
- 24 federal cost principles; is that right?
- 25 A. Yes.

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1 Q. And then below the next line says, recipients shall also

- ensure that all salary wages, et cetera, fringe benefits,
- 3 travel, et cetera, et cetera, the rest of that I won't read it
- 4 all, but do you see that whole paragraph?
- 5 A. Yes.
- 6 Q. What does that whole paragraph mean?
- 7 MR. RUBINSTEIN: Objection, your Honor.
- 8 THE COURT: What do you tell -- do you discuss this
- 9 paragraph with the -- at the kickoff meeting?
- 10 THE WITNESS: No, we don't -- not in-depth. This is
- 11 this is part of their regulations that they follow, this is
- 12 this is --
- 13 THE COURT: Is this distributed to them?
- 14 THE WITNESS: Yes, it is.
- 15 THE COURT: To the --
- 16 THE WITNESS: Yes.
- 17 THE COURT: And if there are questions about, is it
- 18 appropriate, you ask them if they have any questions about the
- 19 materials?
- 20 THE WITNESS: Exactly. They can ask all the
- 21 questions, yes.
- 22 MR. EVERDELL: Your Honor, this is the person who is
- 23 the rules person so her interpretation of the rules is relevant
- 24 about what it means.
- MR. RUBINSTEIN: I move to strike that, your Honor,

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- 1 the comment.
- THE COURT: Let's not have argument.
- 3 MR. EVERDELL: I apologize, your Honor.
- 4 Q. All right. Ms. Snowden, I'll ask the question again this
- 5 paragraph which mentions reasonable, allocable and allowable
- 6 costs, as well as fringe benefits, what does that mean, that
- 7 term?
- 8 MR. RUBINSTEIN: Objection, your Honor. She's already
- 9 testified that she didn't discuss this with Dr. Karron.
- 10 THE COURT: Is there a provision in the materials that
- 11 are distributed to the recipients that explains what that
- means?
- 13 THE WITNESS: Well, just like the rest of the
- 14 regulations, we give them a copy of it. If they don't
- understand it, they're to call and ask.
- 16 THE COURT: Where do they -- where are the, where is
- 17 it explained?
- 18 THE WITNESS: Well, it's not detailed. It's not, it's
- 19 not explained in detail.
- 20 THE COURT: Not?
- 21 THE WITNESS: You're -- they're just given a
- 22 distribution and copy of the terms and conditions. And at the
- 23 kickoff I just explain, these are the regulations that govern
- 24 the award. If you don't understand them and need them to be
- 25 explained, call me.

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1 So this was part of the handout that was given to the

- 2 recipient. So if he didn't understand, or she or whoever
- didn't understand what this meant, it was up to them to give me
- 4 a call and ask me to explain it further.
- 5 MR. EVERDELL: Your Honor, if I could have a moment,
- 6 please?
- 7 THE COURT: Yes, sir. I see the other --
- 8 BY MR. EVERDELL:
- 9 Q. All right. Ms. Snowden, if I could for a moment, if we
- 10 could take down that and put up Government's exhibit 10B, which
- 11 is already in evidence if you want to refer to that, and I
- believe this is the last page of that document?
- 13 THE COURT: What is exhibit 10B?
- 14 BY MR. EVERDELL:
- 15 Q. Ms. Snowden, do you see 10B?
- 16 A. Yes, I have 10B. It's your budget letter, looks like this.
- 17 THE COURT: Is that distributed to the recipients?
- 18 THE WITNESS: Yes.
- 19 THE COURT: What time?
- 20 THE WITNESS: They get a copy of this. This is filled
- 21 out by them, the recipient fills this portion out. This is how
- 22 they outline how -- this corresponds with the budget that they
- 23 give us. So line by line, all this these line items
- 24 ultimately, the total corresponds with the budget they give us
- for personnell, travel so on and so forth.

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- 1 THE COURT: With their application for the grants.
- 2 THE WITNESS: Yes, they give this to us. And then
- 3 when we send them the documents to sign, this is attached. So
- 4 they sign the document, and this is attached and they're saying
- 5 everything is correct.
- 6 Q. So just to be clear, this is a document that was prepared
- 7 by the people at CASI and submitted to NIST to you?
- 8 A. Yes.
- 9 Q. All right. Seeing the same page now that I believe is the
- 10 last page of that exhibit, you see the top portion there?
- 11 A. Yes.
- 12 Q. Fringe benefits, it says?
- 13 A. Yes.
- 14 Q. And it says makes up the --
- 15 THE COURT: She's just, she's just made it so you
- 16 can't read it.
- 17 MR. EVERDELL: If we could zoom just a touch more?
- 18 THE COURT: Just the top section.
- 19 MR. EVERDELL: All right, I think that's probably --
- 20 THE COURT: I guess you can read it. Can everyone
- 21 read it? All right.
- 22 Q. Ms. Snowden, would you just read that after fringe
- 23 benefits?
- 24 A. Identify percentage rate. If greater than 35 percent,
- provide a breakdown of what makes up the fringe benefits, i.e.,

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- 1 vacation, sick, military leave, health and life insurance,
- 2 retirement, Social Security, et cetera. If fringe benefits are
- 3 normally included in your organization's indirect cost rate,
- 4 they should be budgeted as such and check the appropriate line
- 5 below.
- 6 Q. And is this part of the budget that was submitted by CASI?
- 7 A. Yes.
- 8 Q. And this is their allocation of fringe benefit rates?
- 9 A. Yes.
- 10 Q. All right. So does this document explain what fringe
- 11 benefits are for the ATP grants?
- MR. RUBINSTEIN: Objection, your Honor.
- 13 THE COURT: What they may include.
- MR. EVERDELL: Excuse me, your Honor.
- 15 Q. Ms. Snowden, does this document explain what fringe
- 16 benefits may include in a budget proposal --
- 17 A. Yes.
- 18 Q. -- submitted by a company who receives an ATP grant?
- 19 A. Yes, it does.
- 20 Q. And do those fringe benefits include health insurance,
- 21 according to this list?
- 22 THE COURT: I think that they've been read to the jury
- and I think the jury knows whether that's included or not.
- 24 MR. EVERDELL: All right. Thank you, your Honor.
- Q. Can you explain what the last sentence means, if fringe SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 benefits are normally included in your organization's indirect
- 2 cost rate, they should be budgeted as such and check the
- 3 appropriate line below?
- 4 A. Right. Usually fringe benefits are indirect costs. That's
- 5 the cost of doing business. If they're normally put in your
- 6 indirect costs, just because you receive a federal grant
- 7 doesn't mean all of a sudden they're going to be a part of your
- 8 direct costs, and the government is going to pay for it. If
- 9 you, in your normal, in your normal business day, your
- 10 procedures that you use it, that you charge these as an
- 11 indirect cost to your company, you still must follow the same
- 12 accounting principles when you receive the grants, or the
- 13 federal funds. That's what that means.
- 14 Q. All right. Now, is there anything that ATP requires of a
- 15 company that receives an ATP grant if they're going to spend
- 16 ATP funds on fringe benefits?
- 17 A. The requirement is if it's over 35 percent, you have to
- 18 itemize. Under, you don't have to give us detail.
- 19 Q. Is there any other requirement as to procedures that the
- 20 ATP requires of a recipient?
- 21 A. You must have written, written procedures. So under, under
- 22 regulations, you must have management, and you must have
- 23 written, written procedures that govern.
- 24 THE COURT: You say written procedures, you mean
- 25 written standards?

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1		THE WITNESS: Written standards, procedures for your
2	company,	that will outline.
3		THE COURT: As to what constitutes.
4		THE WITNESS: Yeah, what constitutes your course of
5	business	, yes.
6		THE COURT: All right. Is this a good place to break?
7		MR. EVERDELL: There is a good place, your Honor.
8		THE COURT: All right, let's take a break and please
9	come back	c at 9:30. And I have a note from one of the jurors,
10	but I car	n't take it up until I've had a chance to discuss it
11	with cour	nsel, all right. I'll do it first thing in the
12	morning,	though I'll try and do it 9:15.
13		(Jury exits the courtroom)
14		(Continued on next page)
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- 1 (In open court; jury not present)
- THE COURT: All right, is there anything to take up?
- MR. RUBINSTEIN: No, your Honor.
- 4 THE COURT: All right, see you at 9:15 in the morning.
- 5 MR. RUBINSTEIN: Yes, your Honor.
- 6 MR. KWOK: Your Honor, I do have two issues. I don't
- 7 know whether this is a good time or whether it's better to
- 8 raise it tomorrow morning. Essentially, I just --
- 9 THE COURT: Maybe it would be good to give Mr.
- 10 Rubinstein and myself a head's up about what the two issues are
- and maybe we'd be able to take less time tomorrow morning on
- 12 them.
- 13 MR. KWOK: The first one is just expert witnesses. We
- 14 want to once again advice the Court and defense counsel we may
- soon be calling the first of our two expert witnesses on
- 16 accounting, and I just want to know whether there are going to
- 17 be any objections so we don't have an argument in front of
- 18 jury.
- 19 The second is I prepared some exhibits that will be
- 20 discussed by that witness and I also want to know whether those
- 21 are acceptable to the Court and defense counsel.
- 22 THE COURT: Well, I haven't had either. I have no
- 23 knowledge about either application. I don't even know the
- 24 names of the expert witnesses.
- MR. KWOK: The first, the witness expert I'm referring SOUTHERN DISTRICT REPORTERS, P.C.

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1 to is Belinda Riley and I can show the Court and defense

- 2 counsel the blowups if --
- 3 THE COURT: Who are the two people?
- 4 MR. KWOK: The two expert witnesses are Belinda Riley
- 5 and Joan Hayes. The first one up would be Belinda Riley.
- 6 THE COURT: Any objection, Mr. Rubinstein?
- 7 MR. RUBINSTEIN: None your Honor.
- 8 THE COURT: None, okay.
- 9 MR. KWOK: Thank you, your Honor.
- 10 THE COURT: Next.
- 11 MR. KWOK: And the charts I have previously provided
- 12 them to defense counsel, but these are the blowups. I don't
- 13 know whether there are any objections to explaining these to
- 14 the jury.
- 15 THE COURT: Show them to Mr. Rubinstein.
- 16 MR. RUBINSTEIN: Actually he showed them to me before
- 17 and I told him aside from the color, I had no problem. Now
- 18 that I have a night to prepare for that color, I'll have no
- 19 problem with it tomorrow.
- 20 MR. KWOK: Thank you, your Honor. That's all.
- MR. EVERDELL: Is the witness excused, your Honor?
- THE COURT: Yes.
- THE WITNESS: Thank you.
- 24 THE COURT: I'm sorry.
- 25 (Adjourned to June 4, 2008, at 9:30 a.m.)

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	8647KAR1	
1	UNITED STATES DISTRICT COURT	
1	SOUTHERN DISTRICT OF NEW YORK	
2	x	
2		
3	UNITED STATES OF AMERICA,	New York, N.Y.
3		
4	v.	S2 07 CR 541 (RPP)
4		
5	DANIEL B. KARRON,	
5		
6	Defendant.	
6		
7	x	
7		
8		
8		June 4, 2008
9		9:20 a.m.
9		
10		
10	Before:	
11		
11	HON. ROBERT P. PATTERS	GON, JR.,
12		
12		District Judge
13		
13		

APPEARANCES

15	MICHA	AEL J. GARCIA
15		United States Attorney for the
16		Southern District of New York
16	BY:	STEVEN KWOK
17		CHRISTIAN EVERDELL
17		Assistant United States Attorneys
18		
18	RUBI	NSTEIN & COROZZO, LLP
19		Attorneys for Defendant
19	BY:	RONALD RUBINSTEIN
20		
20	Also	Present: Rachel Ondrik, U.S. Dept. of Commerce
21		Kirk Yamatani, U.S. Dept. of Commerce
22		
23		
24		
25		
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- 1 (Trial resumed; jury not present)
- 2 THE COURT: Good morning. We have this letter from
- 3 Ms. McCafferty, and the e-mail to her only says how important
- 4 it is that you try to get off the panel you're on, we need you
- 5 in the office this week. Of course then she says she received
- 6 ten calls, etc. What do the attorneys advise me would be a
- 7 wise way to handle this?
- 8 MR. KWOK: Your Honor, I spoke with Mr. Rubinstein
- 9 earlier this morning briefly. I think the parties agree we
- 10 should inquire briefly of the juror to see whether she can
- 11 remain fair and impartial in light of the work pressure. The
- 12 only concern the government has is it's just the third day of
- 13 trial, and we would be reluctant.
- 14 THE COURT: Well, isn't this conduct in violation of
- 15 law, trying to put pressure on a juror to get off the panel
- 16 that she is already on?
- 17 MR. EVERDELL: I looked briefly into that. I can't
- 18 say I did an exhaustive search, but I did see there is a civil
- 19 remedy if an employer discharges, threatens to discharge,
- 20 intimidates or coerces any permanent employee by reason of such
- 21 employee's jury service. Usually that's threatening to fire or
- threatening some sort of immediate employment action.
- 23 THE COURT: Well, there is an implicit threat to fire
- and then they're calling her. They shouldn't be interfering
- 25 with her service in this way.

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- 1 MR. EVERDELL: It's certainly true that they shouldn't
- 2 be interfering with her service. Whether or not it rises to
- 3 the level of an illegal act that would cause civil penalties,
- 4 that I can't say. But obviously there is a civil provision in
- 5 the U.S. Code if it rises to the level of threatening. It's 28
- 6 U.S.C. 1875.
- 7 THE COURT: What does it say?
- 8 MR. EVERDELL: It says no employer shall discharge,
- 9 threaten to discharge, intimidate or coerce any permanent
- 10 employee by reason of such employee's jury service in any court
- of the United States.
- 12 THE COURT: Coerce.
- 13 MR. EVERDELL: I suppose. I don't want to make an
- 14 argument one way or the other what the employer's actions are
- 15 like, but obviously there is reason to believe that he
- 16 shouldn't be doing this. Whether or not it ultimately rises to
- 17 the level of a violation is another matter.
- 18 THE COURT: Well, let's call the juror in,
- 19 Ms. McCafferty.
- Good morning, Ms. McCafferty.
- 21 Well, I got your note yesterday and I read it, but
- 22 employers are not supposed to put employees such as yourself
- 23 under pressure. There is a provision in the Code of Civil
- 24 Procedure that states that they're not supposed to do this.
- 25 And I don't know how best to aprise them of this, but they

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- 1 shouldn't be calling you and telling you about all of their
- 2 problems and what have you. If the bosses chose to go off on
- 3 trips and what have you, some of them can come back. It
- 4 shouldn't be interfering with your service.
- 5 What I'm concerned about is how to best tell your
- 6 employer in some way so that they don't put you under this
- 7 pressure anymore. They shouldn't put you under this pressure.
- 8 I don't know how to best tell them.
- 9 JUROR: I'm the only one that does my job and has been
- 10 for the last ten years.
- 11 THE COURT: I know, but other people.
- 12 JUROR: I understand what you're saying. It's just
- 13 like I worked until 1:30 this morning, and can I see this case
- 14 is going to take --
- 15 THE COURT: I know. I got this letter.
- 16 JUROR: That's fine.
- 17 THE COURT: What is the employer's name? I'm sorry.
- 18 I better write it down here.
- 19 JUROR: The name of the company? Savanna Real Estate
- 20 Fund. Savanna without an H on the end. S-A-V-A-N-N-A.
- 21 THE COURT: Savannah?
- JUROR: Yes.
- THE COURT: Like Savannah, Georgia?
- JUROR: Like Savannah, Georgia without the H on the
- 25 end.

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- 1 THE COURT: And what's the rest of the name?
- JUROR: Real Estate Fund.
- 3 THE COURT: And the address?
- 4 JUROR: 10 East 53rd Street, and the zip code is
- 5 10022.
- 6 THE COURT: Fax number?
- 7 JUROR: (212) 229-1113.
- 8 THE COURT: All right. Well, I'm going to fax them a
- 9 letter this morning and tell them to stop.
- 10 JUROR: They're not harassing me. I don't want you to
- 11 take it like that.
- 12 THE COURT: It's just that -- I guess you can go back.
- 13 I will try to write something that doesn't say harass or
- 14 anything of that sort.
- JUROR: OK, thank you.
- 16 THE COURT: I don't want to give you the impression --
- 17 I don't want to give them the impression that you've complained
- 18 that they're harassing you.
- 19 JUROR: No, that's not the case. I just feel very
- 20 pressured, that's all.
- 21 THE COURT: Of course.
- 22 JUROR: You know, I'm working at night now, and it's
- just that's all.
- 24 THE COURT: Thank you very much.
- JUROR: Thank you.

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- 1 (Juror not present)
- 2 This is what I drafted, so you might be able to
- 3 improve it.
- 4 "Kim McCafferty is a member of the jury panel in a
- 5 criminal case which will last two weeks. She has attempted to
- 6 be excused from the panel as you requested in your e-mail of
- 7 June 3. I have denied that request. The case is somewhat
- 8 complex, and it is important that it be completed without a
- 9 mistrial based on too few jurors. It is important that she not
- 10 feel pressured either by telephone calls during the day or
- 11 onerous duties at night."
- MR. KWOK: I think that's perfect.
- 13 THE COURT: Sound all right?
- MR. RUBINSTEIN: No problem at all, Judge.
- 15 THE COURT: All right.
- 16 DEPUTY COURT CLERK: We're still short one juror. A
- 17 couple of the jurors have asked about taking notes.
- 18 THE COURT: Anything else to take up?
- 19 MR. KWOK: Yes, your Honor. Just two quick things.
- 20 The first is before we broke yesterday your Honor asked how
- 21 we're doing on time, and I replied that I think we're running a
- 22 little behind.
- THE COURT: What's that mean?
- 24 MR. KWOK: I don't know what that means, but here is
- 25 the punch line. We went back last night to look at where we

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- 1 are, and we may be able to trim our witness list up to and
- 2 including cutting out one of the CPAs who might be testifying.
- 3 We're not committed to taking that course yet, but I wanted to
- 4 advise the court and defense counsel that's what we are
- 5 seriously considering so we can all plan accordingly.
- 6 The second issue is after Ms. Snowden's testimony this
- 7 morning or maybe this afternoon the next witness up is Belinda
- 8 Riley. I would request a slight break, because there is going
- 9 to be some setting up to do for this witness, so I would just
- 10 put that request to the court now.
- 11 THE COURT: OK.
- MR. KWOK: Thank you.
- 13 MR. RUBINSTEIN: Excuse me, your Honor, we have a
- 14 slight problem.
- THE COURT: Where is your client?
- MR. RUBINSTEIN: He is not here yet.
- 17 THE COURT: You should have told me earlier this
- 18 morning.
- 19 MR. RUBINSTEIN: I was hoping he would get here by
- 9:30. Yesterday I picked him up myself. And I spoke to him
- 21 this morning at 7:30 when I was leaving my house, and he said
- 22 that he would come himself. If I could use the court phone, I
- 23 will call his cell phone.
- 24 THE COURT: Call his cell phone.
- MR. RUBINSTEIN: Thank you. I know that he sent an SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 e-mail 3:41 this morning, so ...
- 2 Your Honor, I just spoke to my client who informs me
- 3 he has a cab waiting downstairs. He is in the process of
- 4 leaving his home on East 33rd and Second Avenue.
- 5 THE COURT: At quarter of ten?
- 6 MR. RUBINSTEIN: At quarter of ten, yes.
- 7 THE COURT: He is supposed to be here at quarter after
- 8 nine?
- 9 MR. RUBINSTEIN: Judge, I will pick him up for the
- 10 rest of the trial.
- 11 THE COURT: Well, since it's voluntary, I suppose we
- 12 can go ahead. You better call your office, Mr. Kwok and Mr.
- 13 Everdell. That's what I propose to do.
- 14 MR. EVERDELL: If we could have a moment to call just
- to make sure that that's acceptable.
- 16 THE COURT: Sure.
- MR. RUBINSTEIN: Can I use the courtroom phone to call
- 18 my office to see if they have some guidance?
- 19 THE COURT: OK. You can use our phone.
- 20 MR. RUBINSTEIN: Thank you very much, your Honor.
- 21 (Recess)
- 22 THE COURT: That's how I intend to proceed.
- 23 MR. KWOK: I just conferred with our chief of appeals.
- 24 Based on just the quick conversations, she is inclined to wait
- 25 because --

8647KAR1

- 1 THE COURT: Oh, come on. Get an answer from him. Of
- 2 course he would. Get an answer from him one way or the other
- 3 on the law. We can't have this go on.
- 4 MR. KWOK: I guess the only thing I would ask, if
- 5 defense counsel would tell us is --
- 6 THE COURT: No, there is no excuse.
- 7 MR. RUBINSTEIN: I know that, Judge, but --
- 8 THE COURT: He has no excuse. It isn't that he has
- 9 been in the hospital or anything else. He has no excuse.
- 10 MR. RUBINSTEIN: I understand that, your Honor, but
- 11 unfortunately it would send I think a terrible message --
- 12 THE COURT: That's his choice.
- 13 MR. RUBINSTEIN: -- to the jury, and he couldn't get a
- 14 fair trial.
- 15 THE COURT: Oh, come on, that's his choice. That was
- 16 his choice when he was lazy about getting up or whatever he was
- 17 doing.
- MR. RUBINSTEIN: Judge, he was up at 3:41 in the
- morning because he sent me an e-mail.
- 20 THE COURT: He didn't have to. He could have gone to
- 21 bed at a decent hour like everyone else.
- 22 MR. RUBINSTEIN: I would ask your Honor -- as we know
- from my conversation with him, he should be here.
- 24 THE COURT: You can't tell with traffic and possible
- 25 rain and what have you.

8647KAR1

- 1 MR. RUBINSTEIN: That is accurate, your Honor, but I
- 2 would ask if your Honor --
- 3 THE COURT: I mean it, let's get an answer on the law
- 4 from the assistant, whoever you are checking with, the
- 5 appellate group.
- 6 MR. EVERDELL: We will do that. May we be excused?
- 7 THE COURT: There is no excuse whatsoever for this.
- 8 Good morning, Ms. Koeleveld.
- 9 MS. KOELEVELD: As you can see, there was a consult.
- 10 THE COURT: I can remember Judge McMann putting the
- 11 jurors in the jury box and waiting for the defendant to come.
- 12 MS. KOELEVELD: I don't see a problem with that.
- 13 MR. RUBINSTEIN: Judge Nickerson in the Eastern
- 14 District used to do that, and if the lawyer wasn't there, they
- 15 would start.
- 16 THE COURT: Do it with the lawyer too. Of course the
- 17 marshals would bring the defendant in those cases.
- 18 MR. KWOK: Your Honor, I think the relevant rule that
- 19 governs this situation is Rule 43 of the criminal procedure,
- 20 subsection (c)(1)(A), which reads, "The defendant who was
- 21 initially present at trial or who had pleaded guilty or nolo
- 22 contendere waives the right to be present under the following
- 23 circumstances: A, when the defendant is voluntary absent after
- 24 the trial has begun, regardless of whether the court informed
- 25 the defendant of an obligation to remain during trial."

8647KAR1

1	From what we have just heard so far, I think the only
2	excuse is perhaps the defendant overslept. And I think as long
3	as your Honor makes a finding on the record that the defendant
4	voluntarily absented himself and there is no legitimate excuse
5	for an absence, I think we are fine going forward.
6	THE COURT: All right, let's call in the jury.
7	MR. RUBINSTEIN: I would have to, with all due
8	respect, ask for a mistrial.
9	THE COURT: Your application is denied.
10	MR. RUBINSTEIN: I would ask for a limiting
11	instruction that the defendant is absent and they shouldn't
12	speculate as to the reason that he is not present.
13	THE COURT: All right. Please call in the jury.
14	(Continued on next page)
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8647KAR1

L	(Jury	present)	١

- THE COURT: Please be seated. Ladies and gentlemen,
- 3 you will note that the defendant is not here. You are not to
- 4 speculate as to why he is not here or not present at this time.
- 5 He is expected at some point.
- I want to thank you for being on time, but obviously
- 7 we got delayed a little bit.
- 8 Some of you have asked about taking notes. I allow
- 9 taking notes, but I do want to give you a warning. The
- 10 difficulty that notetaking presents sometimes is that people
- 11 who take the notes become wedded to the notes and think that
- 12 they have taken verbatim notes, and when you get into jury
- deliberations sometimes that hardens the juror's position, and
- 14 people who watched and listened feel that their recollection is
- 15 correct, and the person who takes the notes says I've got it
- 16 down here in black and white that's what he said.
- Well, the answer is you can call for a transcript, and
- 18 the transcript will tell you exactly what the witness said,
- 19 because the court reporter has the benefit of long expertise in
- 20 taking notes and mechanical assistance so that he or she can
- 21 get every word that is said.
- 22 So, I allow taking notes, but I want to warn you that
- 23 it does sometimes cause difficulty in the jury room because of
- 24 the people taking notes having a conflict with the people who
- 25 didn't take notes. There is a resolution to it. If I explain

8647KAR1

1 the resolution in advance, that sometimes prevents disputes in

- 2 the jury room.
- 3 So, I think I've answered the only questions I have
- 4 outstanding. We will go ahead with the witness Ms. Snowden.
- 5 HOPE SNOWDEN, resumed.
- 6 THE COURT: Ms. Snowden, you are reminded you are
- 7 still under oath. The jury is reminded that that is an
- 8 obligation of the court to give her such an instruction when
- 9 the witness takes the stand on a subsequent day.
- 10 DIRECT EXAMINATION (Continued)
- 11 BY MR. EVERDELL:
- 12 Q. Good morning, Ms. Snowden.
- 13 A. Good morning.
- 14 Q. Before we start, if I could ask Ms. Moussa to put up
- 15 Government Exhibit 4, which is already in evidence, page 7.
- 16 THE COURT: This is what?
- 17 MR. EVERDELL: Government Exhibit 4, page 7.
- 18 Actually, if I have a moment, I need to reposition the
- 19 exhibits back on the witness stand.
- 20 Q. Ms. Snowden, if you can refer to the screen or the exhibit
- in front of you, Government Exhibit 4.
- 22 A. I will look at the exhibits. They are not in order, so...
- 23 Q. You recall when we broke yesterday we had some discussion
- 24 about that second bullet point there, the budget line item
- 25 changes there.

8647KAR1 Snowden - direct

- 1 A. Yes.
- Q. Greater than 10 percent. What was the first year of CASI's
- 3 budget under their ATP grant they received?
- 4 A. \$800,000.
- 5 Q. What year did that span?
- 6 A. October 1, 2001 until September 30, 2002.
- 7 Q. So the initial budget that was approved, what year did that
- 8 cover, that budget?
- 9 A. October 1, 2001 until September 30, 2002.
- 10 Q. So, would that budget cover costs that were incurred during
- 11 that year, during that October 1 to September --
- 12 A. That's the only time they were covered. It only covers
- 13 expenditures during that period of time only.
- 14 Q. Would it cover any expenditures that occurred before that
- 15 time?
- 16 A. No.
- 17 Q. We talked a bit also about the regulations governing the
- 18 ATP grants yesterday.
- 19 A. Yes.
- 20 Q. Just a few more questions about that. Are there
- 21 government-wide regulations that apply to the ATP grants that
- 22 are not ATP grant specific?
- 23 A. Yes.
- 24 Q. And do these regulations apply to more than one government
- 25 grant?

8647KAR1

Snowden - direct

- 1 A. Yes.
- Q. Are there rules specific to the ATP grant that just cover
- 3 the ATP grant?
- 4 A. Yes, there is.
- 5 Q. And which rules control if there is an ATP-specific rule
- 6 versus a government-wide rule?
- 7 A. Your ATP special work conditions and your general terms and
- 8 conditions, they are specified within the award, so ...
- 9 Q. So, if there is an ATP rule that applies to the ATP grant
- 10 and a government-wide rule --
- 11 A. Your ATP rules supersede all other rules, because they're
- 12 program-specific rules, so you have your ATP rules and then
- other rules, but ATP supersedes everything.
- 14 Q. OK. Ms. Snowden, while the grant was in effect for CASI,
- do you know who had the authority to sign checks for CASI or
- 16 make other financial commitments on behalf of the company?
- 17 A. Yes.
- 18 Q. And who had the signatory authority for CASI?
- 19 A. Dr. Karron.
- 20 Q. And how do you know that?
- 21 A. Because I received -- I received the e-mail. I actually
- 22 received a letter from him stating that no other person was
- 23 authorized to certify anything under the company besides
- 24 himself.
- Q. I would like you to look if it's in your stack there SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR1 Snowden - direct

1 Government Exhibit 21 already in evidence, and if we can

- 2 display that on the screen.
- 3 Do you have that in front of you, Ms. Snowden?
- 4 A. Yes, I do.
- 5 Q. Do you recognize that document?
- 6 A. Yes.
- 7 Q. What is that?
- 8 A. This is an amendment to the original proposal.
- 9 Q. And which numbered amendment is that?
- 10 A. Number 1, the first one.
- 11 Q. Would you please flip to the third page of that exhibit.
- 12 If we could zoom in on the final paragraph or the final -- the
- 13 letter substance is fine. Right there.
- 14 All right. Ms. Snowden, what is this letter?
- 15 Actually if you could just read from the two paragraphs there.
- 16 A. "This letter authorizes Mr. Lee Gurfein as administrative
- 17 contact on cooperative agreement number 70NANB1H3050 with
- 18 Computer Aided Surgery, Inc.
- 19 "This authorization is valid for the period of one
- 20 year from the start of the agreement on October 1, 2001 through
- 21 September 30. This authorization can be revoked in writing to
- 22 you and him by myself at any time this authorization is in
- 23 effect. Until specifically authorized to do so, Mr. Gurfein is
- 24 not an officer of the corporation and is not authorized to sign
- 25 for the corporation. The authorization for Mr. Gurfein to

8647KAR1 Snowden - direct

- 1 commit the corporation will be made by separate letter
- 2 authorization if the need arises."
- 3 O. Let's just take that one bit at a time. That first
- 4 paragraph there, it says it authorizes Mr. Gurfein as an
- 5 administrative contact. What is that again?
- 6 A. The person who calls me and asks questions. It could be
- 7 about what's allowed in this grant.
- 8 Q. OK. Now this last sentence here, "until specifically
- 9 authorized to do so, Mr. Gurfein is not an officer of the
- 10 corporation and is not authorized to sign for the corporation,"
- 11 what does that mean?
- 12 A. That means he can't sign official documents. So, he can
- 13 contact me and talk to me verbally, but when it comes to
- 14 official documents and signing to commit the company, he is not
- 15 authorized to do so.
- 16 O. Who did have that authorization?
- 17 A. Dr. Karron.
- 18 Q. And then it says at the end, "The authorization for
- 19 Mr. Gurfein to commit the corporation will be made by separate
- 20 letter authorization if the need arises."
- 21 Do you see that?
- 22 A. Yes.
- 23 Q. Did NIST or ATP ever receive another letter giving Mr. Lee
- 24 Gurfein authorization to commit the company in any way?
- 25 A. No.

8647KAR1

Snowden - direct

- 1 Q. If we can zoom out to the full letter on page 3. When is
- 2 that letter dated?
- 3 A. October 11, 2001.
- 4 Q. And about how long after the grant was awarded did that
- 5 letter come in?
- 6 A. Within two weeks.
- 7 O. All right. Ms. Snowden, did you hear from Dr. Karron again
- 8 after the kick-off meeting that we discussed yesterday?
- 9 A. Yes, I did.
- 10 Q. And how did you hear from him?
- 11 A. He contacted me.
- 12 Q. In what ways did he contact you?
- 13 A. He called me on the phone. I mean during the course he
- 14 e-mailed me also.
- 15 Q. And about how often did he contact you in these ways?
- 16 A. Quite often, quite often.
- 17 Q. And do you know whether he contacted anyone else at NIST?
- 18 A. Yes.
- 19 O. Who else did he contact?
- 20 A. B.J. Lide, Jayne Orthwein, and my former supervisor Marilyn
- 21 Goldstein.
- 22 Q. Did these people all have some responsibility with the ATP
- 23 grant?
- 24 A. We worked as a team on the ATP grant, and any issues and
- 25 problems, we discuss it; and anything that happens within my SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR1 Snowden - direct

- office, of course I have to discuss it with my supervisor
- 2 Marilyn Goldstein.
- 3 Q. What sorts of things did the defendant discuss with you in
- 4 these subsequent contacts?
- 5 A. Subsequent contacts were basically about could he use
- 6 federal funds to pay for rent and utilities.
- 7 Q. So, is this a similar topic as before?
- 8 A. Exact similar. It's the exact topic.
- 9 Q. And what was your response to him on those occasions that
- 10 he talked to you?
- 11 A. It was always no. No matter what he said, how he said it
- 12 to me, it's no, these are taxpayers money and we do not use
- 13 that to pay for rent and utilities.
- 14 Q. Did you hear from anybody else from CASI after the kick-off
- 15 meeting?
- 16 A. Yes.
- 17 Q. Who did you hear from?
- 18 A. Dr. Karron and Lee Gurfein.
- 19 Q. And how did Lee Gurfein contact you?
- 20 A. He called me.
- 21 (Defendant present)
- 22 Q. And what if anything did you discuss with Lee Gurfein?
- 23 A. The same thing, about calls, could he use the federal funds
- 24 to pay for rent and utilities.
- Q. And what if anything was your response to Mr. Gurfein?

SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR1 Snowden - direct

- 1 A. No. Again and again, absolutely not.
- Q. All right, Ms. Snowden. Did there come a time when there
- 3 were amendments to this grant, the CASI ATP grant?
- 4 A. Yes.
- 5 Q. And if you can pull out in front of you the folders that
- 6 are in evidence, Government's Exhibits 22, 23, 24, 25 and 26.
- 7 A. OK.
- 8 Q. Have you had a chance to look at those documents?
- 9 A. Yes.
- 10 Q. Do you recognize those documents?
- 11 A. Yes.
- 12 O. What are those documents?
- 13 A. These are amendments to the award.
- 14 O. And over what course of time were these amendments
- 15 submitted and approved?
- 16 A. Including the original document that he signed to accept
- the grant, October 2001 through June 2003.
- 18 Q. Were these amendments actually approved by NIST?
- 19 A. Yes, these are all approved amendments, yes.
- 20 Q. In general, what kinds of changes were made to the grant as
- 21 a result of these amendments?
- 22 A. Administrative changes and a budget change.
- 23 Q. Why don't you take a look at Government Exhibit 22. If you
- 24 can display that as well. Do you see that document,
- 25 Ms. Snowden?

8647KAR1 Snowden - direct

- 1 A. Yes, I do.
- 2 Q. Which amendment is that?
- 3 A. Amendment 2.
- 4 Q. And what kind of changes were made with amendment 2?
- 5 A. Administrative changes and a budget change, revised budget.
- 6 Q. There was a revised budget with this amendment?
- 7 A. Yes, it was approved, yes.
- 8 THE COURT: You say administrative changes. What are
- 9 you covering?
- 10 A. We revised the contact's name. When I originally got this,
- 11 I put the administrative contact as Lee Gurfein, and then Dr.
- 12 Karron sent me something saying that he wanted his whole name
- 13 put in, so that was incorporated into this, so that was an
- 14 administrative change.
- 15 THE COURT: Whose whole name?
- 16 THE WITNESS: Lee Gurfein's name, and it's Elisha
- 17 Gurfein. But in the original document it had Dr. Karron as a
- 18 technical and Lee Gurfein, not Elisha.
- 19 Q. If we could display page 3.
- 20 And, Ms. Snowden, if you could look at page 3.
- 21 Blow that up as much as possible. I believe these are
- 22 also in the jury binders if it's too small to read there.
- 23 Ms. Snowden, you mentioned a revised budget as part of
- amendment 2. Is this the revised budget that's part of that
- 25 amendment?

8647KAR1 Snowden - direct

- 1 A. Yes.
- Q. Now, if you could leave that on the screen and also take a
- 3 look at Government Exhibit 14 which is already in evidence.
- THE COURT: Leave what on the screen?
- 5 MR. EVERDELL: Government Exhibit 22, page 3, which is
- 6 what Ms. Snowden was commenting on before, the budget
- 7 amendments, and comparing that to Government Exhibit 14, which
- 8 is already in evidence.
- 9 Q. Ms. Snowden, looking first at Government Exhibit 14, do you
- 10 know what that document is?
- 11 A. Yes.
- 12 Q. What is that document?
- 13 A. This is the original budget that was approved with the
- 14 original proposal.
- 15 Q. Was that the last approved budget before amendment 2?
- 16 A. Yes.
- 17 Q. All right. What shifts in budget if any are reflected
- 18 between Government Exhibit 14, the last approved budget, and
- 19 government's 22, the first amended budget?
- 20 A. The personnel, fringe benefits, travel, equipment.
- 21 Q. Can you just point us to an example on the screen between
- 22 the two of those categories you are talking about and the
- 23 numbers there.
- 24 A. The first one is dated.
- 25 THE COURT: Can the jury see this? Because my SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR1	Snowden -	direct

1 eyesight used to be excellent, but I can't read it now.

- 2 MR. EVERDELL: Well, I'm sorry.
- 3 THE COURT: Can the jury read it?
- 4 MR. EVERDELL: If the jury has the binders in front of
- 5 them, they can look at the numbers.
- 6 THE COURT: You have the binders so you can follow it.
- 7 MR. EVERDELL: I will note with the pointer where
- 8 these are, so hopefully that will make it a little easier.
- 9 THE COURT: Let's make sure they have the right pages.
- 10 MR. EVERDELL: It's Government Exhibit's 14, which I
- 11 believe is one page, and then the third page of Government
- 12 Exhibit 22.
- 13 All right. Ms. Snowden, you mentioned a few
- 14 categories.
- 15 THE COURT: Just hold it a second until they have a
- 16 chance to get it together.
- MR. EVERDELL: Yes, your Honor.
- 18 THE COURT: Because they will have to do a little
- 19 flipping back and forth.
- MR. EVERDELL: Yes, your Honor.
- 21 THE COURT: What page of 22 is this?
- MR. EVERDELL: It's 3.
- THE COURT: Page 3.
- DEPUTY COURT CLERK: 22, page 3.
- 25 THE COURT: All right.

SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR1

Snowden - direct

- 1 BY MR. EVERDELL:
- Q. All right. Ms. Snowden, you mentioned a few categories
- 3 where there were some shifts. Do you want to just give an
- 4 example that we can highlight here?
- 5 A. On the first document dated 9/20/01.
- 6 O. Government's 14?
- 7 A. Yes, personnel salaries was \$375,000.
- 8 Q. Is that this one right here?
- 9 A. Yes. On the revised budget it went to \$325,000.
- 10 Q. Right there? If you look at the screen. I just want to
- 11 make sure I'm marking the right thing.
- 12 A. Yes.
- 13 Q. OK. Hold on.
- 14 If you can just blow up the first four categories.
- 15 Q. So we did personnel salaries and wages. Can you give us
- 16 another example?
- 17 A. Travel originally was \$4,000.
- 18 Q. Right here?
- 19 A. Yes.
- 20 Q. OK.
- 21 A. Category C, on the original budget. And on the revised
- 22 budget it is now \$20,000 category C.
- 23 Q. Right there?
- 24 A. Yes.
- Q. OK, that's fine. Now, as you compare these two budgets, SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR1 Snowden - direct

- 1 the approved budget with the first amended budget --
- 2 THE COURT: Now just one second. Also you skipped
- 3 over fringe benefits. Was there a change in fringe benefits?
- 4 THE WITNESS: There's quite a few changes. I only
- 5 gave you guys a couple. There are a lot of changes. I didn't
- 6 think you wanted every last one of them.
- 7 Q. Would you mind doing fringe benefits?
- 8 A. Sure. Fringe benefits was originally \$127,500 on the
- 9 original approved budget. The revised approved budget it went
- 10 down to \$110,500.
- 11 Q. Now, looking at the revised budget amendment 2 compared to
- 12 the last approved budget, are any of the changes that were
- 13 affected by the amended budget -- did any of these changes
- relate to an increase for air conditioning cost?
- 15 A. No.
- 16 Q. Do any of these relate to an increase for construction
- 17 costs or site improvement costs?
- 18 A. No, we don't pay for construction costs.
- 19 Q. And did any of these shifts -- sorry. Are any of these
- 20 shifts for site improvement costs?
- 21 A. No.
- 22 Q. Actually, if you could also look at the narrative which is
- 23 page 4 and 5 of Government Exhibit 22. Do you see that
- 24 document?
- 25 A. Yes.

8647KAR1

Snowden - direct

- 1 Q. And do you see -- if you want to highlight the bottom half
- 2 of that first page.
- 3 Do you see where it says reasons for requested
- 4 budgetary changes?
- 5 A. Yes.
- 6 Q. Do you see all those reasons listed there?
- 7 A. Yes.
- 8 Q. Do any of those reasons mention air conditioning?
- 9 A. No.
- 10 Q. Do any of those reasons mention construction costs?
- 11 A. No.
- 12 Q. Do any of those reasons mention site improvement costs?
- 13 A. No.
- Q. Ms. Snowden, did NIST approve this amendment?
- 15 A. Yes, we did.
- 16 Q. Of the other amendments I showed you in that list, 21, 22,
- 17 23, 24, 25 and 26, are there any other changes to the budget
- 18 numbers in those amendments besides the ones we dealt with in
- 19 amendment 2?
- 20 A. No, this was the only approved budget.
- 21 Q. To your knowledge, were any other written amendments in the
- 22 CASI grant approved by NIST other than these documents I showed
- 23 you?
- 24 A. No, this is it.
- Q. Did anyone from CASI make any oral request for amendments SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR1 Snowden - direct

- 1 to the grant?
- 2 A. Yes.
- 3 Q. And who made those requests?
- 4 A. Dr. Karron.
- 5 Q. What did he want to modify with these requests?
- 6 A. He wanted to modify the equipment category.
- 7 Q. And how so?
- 8 A. He wanted to add money to the equipment category to buy a
- 9 piece of equipment.
- 10 Q. And did you have any conversations with the defendant about
- 11 this?
- 12 A. Yes.
- 13 O. About what time was the first conversation you had with the
- 14 defendant about that?
- 15 A. November 2002.
- 16 THE COURT: November 2002.
- 17 THE WITNESS: Yes.
- 18 THE COURT: After the end of the first fiscal year?
- 19 THE WITNESS: The first fiscal year ended September
- 20 30, right. This should have been his site visit, yes.
- 21 Q. You referenced the site visit. Do you know about when the
- 22 site visit occurred?
- 23 A. It was November 2002.
- Q. Were you personally at the site visit?
- 25 A. No, I wasn't here.

8647KAR1 Snowden - direct

- 1 Q. But it this around the time when you had these
- 2 conversations with the defendant about equipment?
- 3 A. Yes.
- 4 Q. On how many other occasions did this same topic of
- 5 equipment come up?
- 6 A. Quite a few times.
- 7 Q. What are the ATP rules about equipment after the grant is
- 8 done using the equipment?
- 9 A. The rules governing equipment is anything that's valued at
- 10 \$5,000 or more you have to do what's called a disposition form,
- 11 so that's all equipment that you own. You have to ask the
- 12 federal government can you either keep it and reuse it for
- 13 another federal grant or can you use it for commercialization.
- 14 And the federal government has a right to say yes or no. And
- if they say no, you have to give us back our equipment.
- 16 Anything under \$5,000 that depreciates you can keep it, we
- 17 don't want it back.
- 18 THE COURT: You can keep it, you mean the grantee.
- 19 THE WITNESS: The grantee can keep it, and the federal
- government, they don't want it back.
- 21 Q. All right. Now when the defendant talked to you about
- 22 buying more equipment, what if anything did you tell him?
- 23 A. After his site visit, since there was talk about this piece
- of equipment, I told him that he had to do a revised budget
- because he wanted to add additional money to the category, to SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR1 Snowden - direct

1 the equipment category, so he needed to revise the budget, send

- 2 me a copy of the budget and a narrative that corresponds with
- 3 the budget.
- 4 Q. And did the defendant in fact submit a proposed revised
- 5 budget to you?
- 6 A. Yes, he did.
- 7 Q. I'm showing you, if you could take a look at Government's
- 8 Exhibits 31, 32, 33, 34, 35 and 36 already in evidence.
- 9 THE COURT: Sorry. Give me those numbers again.
- 10 MR. EVERDELL: Sure. 31, 32 --
- THE COURT: 31 through 36?
- MR. EVERDELL: Yes.
- 13 THE COURT: Go ahead.
- 14 Q. Ms. Snowden, if you would just take a minute to look
- 15 through those. Do you have those in front of you?
- 16 A. Yeah, I just want to look at two more. I have two more I
- 17 want to glance at really quickly. Thanks.
- 18 Q. All set with those?
- 19 A. Yes.
- Q. Do you know what those documents are?
- 21 A. These are revised budgets.
- 22 Q. Are these revised budgets that were submitted by CASI?
- 23 A. Yes.
- Q. And what if anything -- did you receive these budget
- 25 requests?

8647KAR1 Snowden - direct

- 1 A. Yes, I did.
- Q. And did you review them when they came in?
- 3 A. Yes, I reviewed each and every one of them.
- 4 Q. And what if anything did you notice when you began
- 5 receiving these amendments?
- 6 A. I noticed that the numbers changed. Number one, the dates
- 7 were very, very close with the revisions, and on each revision
- 8 the monetary, the category, the numbers changed.
- 9 Q. Let's just be clear. Do you know the dates of these
- 10 revisions, these proposed revisions, I should say?
- 11 A. Yes, because I wrote the dates on them so that I could keep
- 12 up with the revisions and the day that they were dated, so I
- wrote dates on all of these.
- 14 Q. And do you recall when those revisions were made or when
- those proposed revisions were submitted?
- 16 A. One was August 1, 2002 and then --
- 17 Q. You're referring to which one?
- 18 A. Exhibit 31.
- 19 O. OK.
- 20 A. And then October 20, 2002, Exhibit 32. December 2, 2002,
- 21 Exhibit 33. Got an e-mail for December 20, 2002, that's
- 22 Exhibit 34. Exhibit 35 came in four days later. Exhibit 35
- 23 was dated December 24, 2002. And February 25, 2003, that was
- 24 another revision.
- 25 (Continued on next page)

Snowden - direct

- 1 BY MR. EVERDELL:
- Q. And these are proposed revisions?
- 3 A. These are all proposed revisions. None of these were
- 4 approved.
- 5 Q. Why did they come in in quick succession like this?
- 6 MR. RUBINSTEIN: Objection, your Honor.
- 7 THE COURT: Objection sustained.
- 8 MR. EVERDELL: Your Honor, let me rephrase.
- 9 Q. What, if any, discussions did you have with the defendant
- 10 about these budget revisions coming in?
- 11 A. Um, policy -- what I do is I take, I will take this
- 12 revision and I will correspond it to the approved budget. So
- 13 then I have questions because there are other changes in the
- 14 categories beside the category that he wanted to change.
- 15 Q. Which category was that?
- 16 A. He wanted to change the equipment category. That's where
- 17 he was adding money.
- 18 Q. And what did you notice about these revised budgets, aside
- 19 from the equipment category?
- 20 A. That personnel changed, materials and supplies changed
- 21 across, across the board. They came in frequently, and all the
- 22 numbers were changing, and in each of the categories none of
- them were consistent.
- 24 Q. And --
- THE COURT: These relate to the first year?

SOUTHERN DISTRICT REPORTERS, P.C.

Snowden - direct

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1 THE WITNESS: What happened was he asked for --

- 2 THE COURT: Which, do they relate to the first year or
- 3 not?
- 4 THE WITNESS: The first budget was within the first
- 5 year. That's -- so it was, it was in the period.
- 6 And then when I asked questions and he sent another
- 7 budget in, that came in October 20th, so it crossed -- so it
- 8 came within year two.
- 9 THE COURT: But all these changes relate to first year
- 10 expenses?
- 11 THE WITNESS: Let me look. No. He changed some of
- 12 the out years two too, so it wasn't just first year. He
- 13 changed -- if you look at even August 1st, exhibit 31, and you
- 14 can look at the second one, exhibit 32, look at year two, two
- 15 changed, and the change was only really supposed to be in year
- one, but some of the numbers in year two also changed.
- 17 THE COURT: I see.
- 18 THE WITNESS: Okay.
- 19 Q. All right. So just so we can clarify that, Ms. Snowden,
- 20 that first requested amendment that came in, was that -- did
- 21 that -- was that submitted when the grant was still in your
- year one or was in year two at that point?
- 23 A. This is year one.
- Q. And in the subsequent request for amending the budget, what
- year of the grant did those get submitted in?

Snowden - direct

- 1 A. Year two, 'cause year two started October 1st, 2002.
- 2 Q. And what, if anything, did you notice about these budget,
- 3 requested budget amendments that came in while the grant was in
- 4 year two?
- 5 A. Not only were the numbers changing, but once you get in
- 6 year two, you should have actual costs for year one.
- 7 O. Why should you have actual costs for year one?
- 8 A. Because year one is over and everything should be actual,
- 9 because you're going to be required to get an audit, and your
- 10 audited against actual numbers for that first year. So we're
- 11 well into year two, so year one and year two is changing,
- 12 frequently.
- 13 O. All right. Well, let's -- let me ask you this before we
- 14 get to that. Did you approve any of these proposed budget
- 15 amendments?
- 16 A. No.
- 17 Q. If we could take a look at government exhibit 33, page one,
- 18 and Government's exhibit 34 page two, all right. So 33 is up
- 19 on the left-hand side of the screen, 34 is on the right-hand
- 20 side of the screen. You can use the ones in front of you.
- 21 Which -- the Government's 33 is, was submitted on what date?
- 22 A. 33, um, December 2nd, 2002.
- 23 Q. And is that in year one of the grant or year two of the
- 24 grant when that was submitted?
- 25 A. Year two.

Snowden - direct

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1 Q. And Government's exhibit 34 was submitted on what date?

- 2 A. December 20th, 2002.
- 3 O. Is that year one of the grant or year two of the grant when
- 4 that was submitted?
- 5 A. Year two.
- 6 Q. Both in year two?
- 7 A. Yes.
- 8 Q. Okay. I want to look at the year one numbers here as a
- 9 example of what you were talking about before. You mentioned
- 10 before the year one actuals were changing, is that right?
- 11 A. Yes.
- 12 Q. Can you show us on this document an example of what you
- mean by the year one numbers changing?
- 14 A. Let's see. You can go -- we can just go right onto -- we
- 15 go to fringe benefits. Fringe benefits on document one was
- 16 109,700. On exhibit number 34 it's 11 -- it's 112,565.
- 17 Q. So what's the difference their between the two?
- 18 A. That difference was like a little over \$3,000. It wasn't
- 19 very big. But keep on going.
- 20 Q. What other categories do you notice here?
- 21 A. You got travel changed, original travel. The travel that
- 22 was proposed in the first budget was 10,800, and then within a
- 23 couple weeks later the numbers changed to 19,920, with a
- difference of, well, \$9,000.
- 25 Q. Okay. Material?

Snowden - direct

- 1 A. Material and supply is another budget.
- Q. Okay. What line is that?
- 3 A. Sorry about that. That's E.
- 4 Q. Okay.
- 5 A. It was \$35,000 in the first proposed revised budget.
- 6 Couple weeks later the number changed till 22,449.
- 7 Q. What's the difference their, roughly?
- 8 A. Probably about a little over \$10,000.
- 9 Q. And again are these year one numbers or year two numbers
- 10 that you're talking about there?
- 11 A. These are all year one numbers, and this is in December of
- 12 two -- December of the second year. So this, these should be
- 13 consistent. They should never change. You should have actual
- 14 numbers.
- 15 Q. And what, if anything, did these shifting numbers in the
- 16 year one numbers indicate to you?
- 17 A. That there is some problems, there was a red flag to me
- there could be some issues of appropriations of these funds;
- 19 therefore, I talked to my team and my supervisor about these
- 20 issues.
- 21 Q. And what did you talk about?
- MR. RUBINSTEIN: Objection, your Honor.
- 23 THE COURT: I'm sorry? We can't get into the, what
- 24 the supervisors told her.
- Q. All right. Ms. Snowden, did you have a discussion with SOUTHERN DISTRICT REPORTERS, P.C.

Snowden - direct

- 1 your supervisors?
- 2 THE COURT: For the truth of the statement, you can't
- 3 offer it for that.
- 4 MR. EVERDELL: Just simply to show the further actions
- 5 that happened later.
- 6 THE COURT: All right.
- 7 Q. Ms. Snowden, did you have conversations with your
- 8 supervisors about this?
- 9 A. Yes.
- 10 Q. And what, if any, action later did you take as a result of
- 11 these conversations with your supervisors?
- 12 A. We called the Office of Inspector General and requested
- 13 them to go to CASI and check out their accounting practices and
- 14 procedures.
- 15 Q. And how were they going to do that, how were you going to
- 16 do that or have that done?
- 17 A. We made a phone call, we sent them an official document and
- 18 they go out, they went out to check on the books.
- 19 Q. Who is they?
- 20 A. The Office of Inspector General, which we consider the OIG,
- 21 the OIG went out there.
- 22 Q. And if you could look now at government's exhibit 30, which
- is already in evidence.
- 24 THE COURT: Exhibit what?
- THE DEPUTY CLERK: 30.

SOUTHERN DISTRICT REPORTERS, P.C.

Snowden - direct

- 1 MR. EVERDELL: 30.
- 2 A. Okay.
- 3 O. Blowup the text of that letter. Ms. Snowden, do you see
- 4 that exhibit in front of you?
- 5 A. Yes, I do.
- 6 Q. Do you recognize that document?
- 7 A. Yes, I do.
- 8 Q. What is that document?
- 9 A. This is an original request for the OIG, Office of
- 10 Inspector General, to go to the company CASI and do an audit
- 11 review.
- 12 Q. And what is the reason for the audit?
- 13 A. Because the numbers were fluctuating and they were
- 14 fluctuating quite frequently within weeks of each other, as a
- 15 grant specialist and my analysis that there, there could be
- 16 some misappropriations and some somebody needed to check it
- 17 out.
- 18 Q. What, if any, auditing requirement was in place for
- 19 companies receiving ATP grants already?
- 20 A. ATP grants, depending on how many years you have -- this
- 21 grant was a three year grant, you're required to have an audit
- 22 90 days after the first year and within 90 days of the final
- 23 year.
- 24 Q. And what was your understanding as to whether or not
- 25 CASI's, CASI was already having that audit at the time?

SOUTHERN DISTRICT REPORTERS, P.C.

Snowden - direct

- 1 A. My understanding is that they were already -- they had
- 2 already gotten an independent CPA and they were already -- they
- 3 had audit in process.
- 4 Q. So why was it necessary to have the Inspector General's
- 5 Office do an audit when an independent officer, auditor had
- 6 already been hired for that purpose?
- 7 MR. RUBINSTEIN: Objection to the why question, your
- 8 Honor.
- 9 THE COURT: Objection sustained.
- 10 Q. Do you know the result of the Inspector General's audit?
- 11 A. Yes.
- MR. RUBINSTEIN: Objection, your Honor.
- 13 THE COURT: Objection sustained. You can answer yes
- or no, but you can't go into the --
- THE WITNESS: Okay, yes.
- 16 Q. All right. Ms. Snowden, are you familiar with someone
- 17 named Bob Benedict?
- 18 A. Yes.
- 19 O. Who is he?
- 20 A. When Lee Gurfein left the company, Bob Benedict was
- 21 proposed to be -- there was a proposal that he would enter the
- 22 company as an administrative contact for CASI.
- 23 So I received a letter from Dr. Karron saying that he
- 24 was going to be the new administrative contact.
- Q. Did he, in fact, become the administrative contact at CASI?

 SOUTHERN DISTRICT REPORTERS, P.C.

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Snowden - direct

- 1 A. He became the administrative contact at CASI for CASI, but
- 2 not under this grant.
- 3 O. The letter that you mentioned were, what is that letter
- 4 from Dr. Karron asking?
- 5 A. The letter was -- the letter was just saying that they had
- 6 that I guess Lee Gurfein had left the company and that they
- 7 were -- they -- that he was going to -- he was hiring somebody
- 8 else to do the administrative work.
- 9 Q. And you said that this new person, Bob Benedict, was not,
- 10 in fact, approved as -- by the ATP people as the administrative
- 11 contact; is that right?
- 12 A. No.
- 13 Q. Why was he not approved?
- 14 THE COURT: I'm sorry, whose approval was required?
- 15 Q. Ms. Snowden, whose approval is required for these sorts of
- 16 changes?
- 17 A. For anybody that's going to be involved in the ATP grants,
- 18 ATP, we have to -- the grant officer has to approve it. He can
- 19 have anybody in his company do any work within his company, but
- 20 not on the grant by the federal government, unless the federal
- 21 government approves it.
- 22 THE COURT: I see.
- 23 THE WITNESS: He's a commercial company. He can do
- 24 whatever he wants.
- Q. So why was, why was Mr. Benedict not approved as the SOUTHERN DISTRICT REPORTERS, P.C.

Snowden - direct

- 1 administrative contact?
- 2 A. Because he was proposed in one of the budgets that we've
- 3 seen all these exhibits, but the budgets were never approved,
- 4 so he was never approved.
- 5 Q. And why were these budgets never approved?
- 6 A. Because the frequent changes and -- because of the frequent
- 7 changes, and that I had to send the OIG out to look at the
- 8 books so we could -- I never approved him because they were
- 9 fluctuating too much.
- 10 Q. And are you able to approve budget amendments or requested
- 11 budget amendments that are submitted by an unapproved contact?
- 12 A. No.
- 13 Q. All right. One moment.
- 14 All right. Ms. Snowden, I've handed up to you a bunch
- of documents. First I'd like you to take a look at
- 16 Government's, what's been marked as identification as
- Government's exhibit 47. Do you see that document Ms. Snowden?
- 18 A. Yes, I do.
- 19 Q. Do you recognize that document?
- 20 A. Yes, I do.
- 21 Q. And how are you able to recognize the document?
- 22 A. Because it was sent to me.
- Q. And what is the document?
- 24 A. The document is an e-mail to myself.
- 25 O. From who?

Snowden - direct

- 1 A. From Dr. D. B. Karron.
- 2 MR. EVERDELL: Government offers Government's exhibit
- 3 47?
- 4 THE COURT: What is this document that's E-mailed to
- 5 you?
- 6 THE WITNESS: This document is the e-mail to me with
- 7 attachments, and attachments are revised financial status
- 8 reports. So it's just explaining that these are revised.
- 9 THE COURT: When was it e-mailed to you?
- 10 THE WITNESS: September 2nd, 2003.
- 11 THE COURT: Any objection?
- MR. RUBINSTEIN: None.
- 13 THE COURT: 47 is admitted in evidence then.
- 14 (Government's Exhibit 47 received in evidence)
- 15 Q. If we can display it, please. If we can highlight just the
- 16 bottom portion of the e-mail.
- Okay, Ms. Snowden, can you just tell us what this
- 18 e-mail says?
- 19 A. It says that attached are revised, are revised financial --
- 20 it says 269s, and that's just the document -- that's the number
- 21 that the federal government gives the document. It's a
- 22 financial status reports.
- Q. This is where it says 269?
- 24 A. Yes, as revised by our project manager, Mr. Bob Benedict.
- 25 Q. And does e-mail say why these are being submitted?

SOUTHERN DISTRICT REPORTERS, P.C.

Snowden - direct

- 1 A. They said these revisions reflect changes in our books made
- 2 by our accountant and auditor Joan Hayes, CPA. It says --
- 3 Q. And what's the date of this e-mail again?
- 4 A. September 2nd, 2003.
- 5 Q. Now you said these 269s you referred to, they're revised
- 6 financial status reports, is that right?
- 7 A. Yes.
- 8 Q. Okay. What is a financial status report?
- 9 A. A financial status report is -- this is how we keep up with
- 10 the spending of grants. So the report is on a quarterly basis.
- 11 An example, calendar quarter like January through March, that
- 12 shows the total outlays, that's the total amount that they
- 13 spent during that quarter.
- 14 It also shows what the federal government is going
- 15 to -- what their portion of the funds is and what the
- 16 recipient's portion of the funds is, so it gives me a picture.
- 17 And I am able to look at that and look at a drawdown, it's
- 18 called like -- it's ASAP, so it's another report so I can see
- 19 the money that was drawn down by the grantee, the recipient. I
- 20 correspond just to make sure that they're taking money out at
- 21 the appropriate rate, they're also incorporating their cost
- 22 share and they're not taking too much of the federal
- 23 Government's portion of the funds. So everything has to
- 24 balance out. So this is why I do my budget analysis.
- 25 Q. And why does NIST require these reports?

SOUTHERN DISTRICT REPORTERS, P.C.

Snowden - direct

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1 A. To make sure that the federal funds are being appropriated

- 2 according to the approved revised budget, or the approved
- 3 budget, period; make sure that it's appropriate.
- 4 Q. And at the time these e-mail revised financial reports were
- 5 sent, what was the status of the grant?
- 6 A. The grant had been suspended.
- 7 Q. If you could take a look now at government what's been
- 8 marked for identification as Government's exhibits 40A, 41A,
- 9 42A, 43A, 44, 45, and 46.
- 10 THE COURT: These aren't admitted in evidence yet, Mr.
- 11 Everdell.
- 12 MR. EVERDELL: No, they're not. I'm just asking her
- 13 to look at them for the purposes of admitting them. I'm sorry,
- 14 the jury --
- 15 THE COURT: The jury is jurist not to look at these.
- 16 It started with 40A?
- 17 MR. EVERDELL: Starting at 40A, 41A, 42A, 43A, 44, 45,
- 18 and 46.
- 19 THE COURT: Don't look at those documents until
- they've been admitted in evidence.
- Q. Do you see those documents, Ms. Snowden?
- 22 A. Yes. I want to look at one more, one more I have to get
- through one more.
- 24 Q. Sure.
- 25 A. Okay.

Snowden - direct

- 1 Q. Do you recognize those documents?
- 2 A. Yes.
- 3 Q. What are those documents?
- 4 A. These are financial status reports.
- 5 Q. Are those original financial status reports or are they
- 6 revised status reports?
- 7 A. They're both, they're both.
- 8 Q. Looking at the A'S only?
- 9 A. Yes.
- 10 Q. 40A, 41A, 42A, 43A -- actually, I'll tell you what, look
- 11 also at Government's exhibits marked for identification as
- Government's exhibits 40, 41, 42 and 43, if you can add those
- 13 to your stack.
- 14 THE COURT: What numbers are those?
- MR. EVERDELL: 40, 41, 42, and 43.
- 16 A. Okay.
- 17 Q. Okay. Let's just do them individually, first starting
- 18 first with Government's exhibit 40. Do you recognize that
- 19 document?
- 20 A. Yes.
- 21 Q. Okay. What is that document?
- 22 A. This is a financial status report.
- 23 Q. What quarter does that cover, that financial status report?
- 24 A. Block nine gives you the period covered, and it's covered
- from October 1st, 2001 through December 31st, 2001. So it's

Snowden - direct

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1 the first quarter of the award.

- Q. Okay. And then looking at 40A now?
- 3 A. Okay.
- 4 Q. Do you recognize that document?
- 5 A. Yes.
- 6 Q. Okay. What is that document?
- 7 A. This is a revision to that first -- to the original
- 8 financial status report.
- 9 Q. And --
- 10 THE COURT: Government 40?
- 11 A. For the same exact same period October 1st, 2000 -- I'm
- 12 looking at the wrong one. I should be looking -- for the exact
- period, October 1st, 2001 through December 31st, 2001.
- 14 Q. So just to be clear, 40 is the original of 40A is the
- 15 revision?
- 16 A. Exactly.
- 17 Q. And they cover the same quarter?
- 18 A. Yes, they do.
- 19 Q. Okay. And looking now at 41 versus 41A?
- 20 A. Okay, I have it.
- 21 Q. Okay. Do you recognize those documents?
- 22 A. Yes.
- Q. Okay. And what are they?
- 24 A. These are -- it's a revision.
- Q. Which quarter do those reports cover?

Snowden - direct

- 1 A. It covers the second.
- THE COURT: Which one are we looking at now?
- 3 MR. EVERDELL: 41A.
- 4 THE COURT: Which are we looking at 41 or 41A?
- 5 MR. EVERDELL: Sorry, your Honor --
- 6 Q. Sorry. Ms. Snowden, look at 41 first.
- 7 A. Yes.
- 8 Q. Do you see that document?
- 9 A. Yes.
- 10 Q. And do you recognize it?
- 11 A. Yes, I do.
- 12 Q. What quarter does that document cover?
- 13 A. It's suppose -- it covers the second quarter, although he
- 14 has the period of performance the first.
- THE COURT: Is this the original?
- 16 THE WITNESS: The second quarter, yes, it covers the
- 17 second quarter because it ends March 31st, 2002, so it covers
- 18 the second quarter of the award.
- 19 Q. Is that the original report or is that the revised report?
- 20 A. 41 is the original. 41A is the revised report.
- Q. Does 41A cover the same time period as 41?
- 22 A. Yes, it does.
- 23 Q. And if you could look now at 42, and 42A. Do you see these
- 24 documents?
- 25 A. Yes.

,864ZKAR2ationu Snowden - direct

- 1 Q. Do you recognize those documents?
- 2 A. Yes.
- 3 Q. Looking first at 42, what period does that financial report
- 4 cover?
- 5 A. It covers the second quarter.
- 6 THE COURT: Second quarter of what year?
- 7 THE WITNESS: Of --
- 8 THE COURT: Of what year?
- 9 THE WITNESS: Of 2002.
- 10 THE COURT: So it covers from four --
- 11 THE WITNESS: April 1st, 2002 until June 30th, 2002.
- 12 Q. So is that the next quarter after the ones you just looked
- 13 at before?
- 14 A. Yes, it does.
- 15 Q. And is 42 the original or the revised financial report?
- 16 A. Original.
- 17 Q. And what about 42A?
- 18 A. Revised document.
- 19 Q. And 42A cover the same period as 42?
- 20 A. Yes.
- 21 Q. Moving to 43 and 43A.
- 22 A. Yes.
- Q. Do you recognize them?
- 24 A. Yes.
- Q. Looking at 43, what period does that cover for this

SOUTHERN DISTRICT REPORTERS, P.C.

Snowden - direct

- 1 financial report?
- 2 A. The third quarter of 2002 being July 1st, 2002, through
- 3 September 30th, 2002.
- 4 Q. Is that the next quarter after 40 -- the exhibits 42 and
- 5 42A that we looked at before?
- 6 A. Yes.
- 7 Q. Is 43 the original or the revised?
- 8 A. 43 is the original.
- 9 Q. And 43A, is that the original or the revised?
- 10 A. Revised.
- 11 Q. Does 43A cover the same period as 43?
- 12 A. Yes.
- 13 Q. Now, if you could look simultaneously at 44, 45 and 46.
- 14 THE COURT: Have you offered anything in evidence?
- 15 MR. KWOK: I'm trying to do that in a minute.
- 16 Q. This is our last three, I believe. Ms. Snowden, if you
- 17 could look first at 44?
- 18 A. Yes.
- 19 Q. What period does that correspond?
- 20 A. October 1st, 2002. So this is the fourth quarter of 2002
- through December 31st, 2002.
- 22 O. And what about 45?
- 23 A. 45 covers the first quarter of 2003 January, January 1st
- 24 2003 through March 31st, 2003.
- 25 Q. And 46?

Snowden - direct

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1 A. 46 is a second quarter 2003 covering April 1st, 2003

- 2 through June 30th, 2003.
- 3 Q. Do you recognize all these documents?
- 4 A. Yes.
- 5 Q. And did you review all these documents when they came in?
- 6 A. Yes, I did.
- 7 MR. EVERDELL: Your Honor, the government moves
- 8 Government's exhibits 40, 40A, 41, 41A, 42, 42A, 43, 43A, 44,
- 9 45 and 46 in evidence.
- 10 THE COURT: Exhibits 40 and 40A, 41, and 41A, 42, and
- 11 42A, 43, and 43A and exhibits 44, 45, 46 are admitted in
- 12 evidence.
- 13 (Government's Exhibits 40, 40A, 41, 41A, 42, 42A, 43,
- 14 43A, 44, 45 and 46 received in evidence)
- 15 Q. Okay. Let's look at, if we can put side by side,
- 16 Government's exhibits 40 and 40A. Put those up on the screen.
- 17 THE COURT: What page or --
- MR. EVERDELL: They're one page.
- 19 THE COURT: One page documents? All right.
- 20 Q. It may in fact be a little difficult to read them from the
- 21 screen so I will do my best to point them to the relevant
- 22 sections.
- 23 But let's look at these documents, Ms. Snowden.
- 24 Looking first at Government's exhibit 40, which time period
- does this cover again?

Snowden - direct

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1 A. It covers the fourth quarter of 2001, October 1st, 2001

- 2 through December 31st, 2001.
- 3 Q. Is that the first quarter of the award?
- 4 A. That's the first quarter of the award.
- 5 Q. And is this Government's exhibit 40 the original or the
- 6 revised version of the plan?
- 7 A. It's the original.
- 8 Q. Looking at first at the line I, see that, line I?
- 9 A. Yes.
- 10 Q. It says, total recipient share of net outlays?
- 11 A. Yes.
- 12 Q. What does that column mean?
- 13 A. That's recipient, that's the non-federal cost share of, for
- 14 this project.
- 15 Q. So that's the cost share?
- 16 A. Yes.
- 17 Q. And what is the cost share again?
- 18 A. The cost share is the portion of the, of the project that
- 19 is paid by the recipient. The recipient, it's non-federal
- 20 funds.
- 21 Q. Sorry. And what number appears there for the cost share
- 22 amounts in the original report?
- 23 A. \$12,320.
- Q. Now, if you look at 40A in the same line, of line I?
- 25 A. Uh-huh.

Snowden - direct

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1 Q. Is that also the cost share amount there?

- 2 A. Yes.
- 3 Q. And what number is reflected there?
- 4 A. Zero.
- 5 Q. And what does that indicate?
- 6 A. That the recipient did not pay the required cost share.
- 7 Q. Whose signature appears at the bottom of Government's 40?
- 8 A. D. B. Karron, Ph.D.
- 9 Q. And whose signature appears at the bottom of 40A?
- 10 A. D. B. Karron, Ph.D.
- 11 Q. Now, if you -- we won't put them up on the screen, but if
- 12 you look at 40 versus 41A, which you testified to is the next
- 13 quarter, what, if anything, is reflected --
- 14 THE COURT: You looked at exhibit 41 and 41A.
- MR. KWOK: I apologize, your Honor.
- 16 Q. If you look at exhibit 41 and 41A, you don't need to put
- 17 them up on the screen necessarily, but just take a look at
- 18 those.
- 19 A. Okay.
- 20 Q. And again at line I, is that cost share number there?
- 21 A. Yes.
- 22 Q. And if you're looking at the original 41, are there amounts
- 23 reflected in that line?
- 24 A. Yes.
- Q. And if you look at the 41A, the revised, what number's SOUTHERN DISTRICT REPORTERS, P.C.

Snowden - direct

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1 reflected in those boxes on that same line?

- I refrected in those boxes on that same line
- 2 A. Zero.
- 3 Q. Does that indicate the same thing you testified before?
- 4 A. Yes.
- 5 Q. And what is that?
- 6 A. It indicates that the original showed that the recipient
- 7 had incorporated and paid into the project his cost share, and
- 8 in the revised there was no cost share, no required cost share
- 9 paid, which means you're noncompliance.
- 10 Q. And in the remaining exhibits that we looked at, does the
- 11 same phenomenon appear?
- 12 A. Consistently.
- 13 THE COURT: I'm sorry, what?
- 14 Q. In the remaining -- I'm just trying to summarize the
- 15 remaining exhibits without showing each of them.
- 16 THE COURT: I think you want got to go through it.
- 17 MR. EVERDELL: I'm sorry, your Honor?
- 18 THE COURT: I think you should go through 42 and 43.
- 19 Q. All right. If you could take out 43 and 43A?
- 20 A. Okay.
- 21 Q. Sorry. 42 and 42A. You have those diagrams, Ms. Snowden?
- 22 A. Yes.
- 23 Q. Again looking at the cost share amount in the original
- 24 financial report, is there a cost share reported there?
- 25 A. Yes, it is.

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Snowden - direct

- 1 Q. In the revised 42A, is there a cost share reported?
- 2 A. No cost share reported.
- 3 Q. And what's the number there?
- 4 A. Zero.
- 5 Q. Finally looking at 43 and 43A. Do you have those
- 6 documents, Ms. Snowden?
- 7 A. Yes, I do.
- 8 Q. Again, looking at the cost share balance in the original
- 9 43, is there a cost share number reported there?
- 10 A. Yes, there is.
- 11 Q. And what does the revised report reflect?
- 12 A. It shows zero cost share.
- 13 Q. Thank you. If you can take a look at what's been marked as
- 14 government exhibit 48 marked for identification?
- 15 THE COURT: 48?
- MR. EVERDELL: 48.
- 17 THE DEPUTY CLERK: 48.
- 18 THE COURT: Exhibit 48 for identification.
- 19 MR. EVERDELL: Not have it on the screen as of yet.
- 20 Q. Ms. Snowden, do you see that document?
- 21 A. Yes.
- Q. Do you recognize that document?
- 23 A. Yes.
- Q. What is that document?
- 25 A. It's a letter sent to me on October -- August 13th, 2003

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Snowden - direct

- 1 from Robert Benedict.
- Q. And how do you recognize it?
- 3 A. 'Cause it was sent to myself, Hope Snowden.
- 4 MR. EVERDELL: Your Honor, the government moves to
- 5 admit Government's 48.
- 6 MR. RUBINSTEIN: I'm objecting to government exhibit
- 7 48, your Honor.
- 8 THE COURT: Objection sustained.
- 9 MR. EVERDELL: Your Honor, if I could lay some
- 10 foundational questions?
- 11 Q. Ms. Snowden, when you received this letter, what did you do
- 12 with the letter?
- 13 A. I reviewed the letter.
- 14 Q. Do you keep this letter?
- 15 A. Yes.
- 16 Q. And where do you keep the letter?
- 17 A. This letter, along with all other documents, are kept in
- 18 the original award file, the original award -- the grant file.
- 19 Q. And where is that grants file located?
- 20 A. In the grants office.
- 21 Q. Now, it the regular practice of your office to keep all
- correspond that you receive, in the grants file?
- 23 A. Yes.
- 24 O. And was this document received and maintained in the
- 25 regularly conducted course of business activity to keep these SOUTHERN DISTRICT REPORTERS, P.C.

,864ZKAR2ationu Snowden - direct

- 1 records?
- 2 A. Yes.
- 3 MR. EVERDELL: Your Honor, the government moves to
- 4 admit Government's 48.
- 5 MR. RUBINSTEIN: Objection, your Honor.
- 6 THE COURT: Is this the original copy you received?
- 7 THE WITNESS: Yes, this is.
- 8 THE COURT: Did you receive it by e-mail or something?
- 9 THE WITNESS: No, this, I think this -- I don't think
- 10 this was received by e-mail the -- yeah, I think okay, it came
- 11 from Bob Benedict. I don't recall if it was received by e-mail
- or my by mail correspondence.
- 13 THE COURT: Well, the issue is whether you're offering
- this for the truth of the contents, Mr. Everdell.
- 15 MR. EVERDELL: Your Honor, if I could have a moment?
- 16 THE COURT: Yes.
- 17 MR. EVERDELL: Your Honor, we'd like to offer this not
- 18 for the truth of the matter contained in it. In fact, there is
- 19 certain statements -- perhaps we should have a sidebar on this.
- 20 MR. RUBINSTEIN: Your Honor, I'm withdrawing, I'm
- 21 withdrawing my objection.
- 22 THE COURT: You're withdrawing your objection. Then
- 23 I'll allow it.
- MR. EVERDELL: All right.
- 25 THE COURT: Exhibit 48 is admitted in evidence.

SOUTHERN DISTRICT REPORTERS, P.C.

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Snowden - direct

- 1 (Government's Exhibit 48 received in evidence)
- 2 MR. EVERDELL: If we can display it on the screen.
- 3 THE COURT: Yes, you may.
- 4 Q. Ms. Snowden, you see the second paragraph there it says, we
- 5 acknowledge that there are disallowed expenses, and they do go
- 6 back to year one, they primarily come from two sources; is that
- 7 right?
- 8 A. Yes.
- 9 Q. What, if anything, did you do when you received this
- 10 letter?
- 11 A. I reviewed the letter, but I didn't respond to this letter.
- 12 So it was reviewed by myself and my project team.
- MR. EVERDELL: One moment.
- 14 All right, your Honor, we'll move onto the next.
- 15 THE COURT: This letter was received at or about the
- 16 time that exhibits 40A, 41A, 42A and 43A were received by your
- 17 agency?
- 18 THE WITNESS: I would have to go back and look at the
- 19 e-mail.
- 20 THE COURT: The revised financial status reports were
- 21 received?
- 22 THE WITNESS: It was probably received during that
- 23 time, and this award was suspended and Bob Benedict is the one
- 24 who sent me this correspondence, and he wasn't approved as a
- 25 contact, so I couldn't correspond with him. We could review,

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Snowden - direct

- 1 but not correspond with him.
- 2 THE COURT: All right.
- 3 Q. All right, we can take that down.
- 4 Ms. Snowden, earlier you referred to an audit that was
- 5 already being conducted at CASI before you called the Inspector
- 6 General's audit?
- 7 A. Yes.
- 8 Q. Is that right? Do you know who the independent auditor's
- 9 name was?
- 10 A. Joan Hayes.
- 11 Q. Did you have any discussions with Joan Hayes?
- 12 A. Yes.
- 13 Q. And what did you two discuss?
- MR. RUBINSTEIN: Objection, your Honor.
- THE COURT: Objection sustained.
- 16 Q. Did Joan Hayes ask you any questions?
- 17 A. Yes, she did.
- 18 Q. What questions did she ask you?
- 19 MR. RUBINSTEIN: Objection, your Honor.
- 20 THE COURT: Objection sustained.
- 21 MR. EVERDELL: Your Honor, questions are not
- 22 statements, they're not hearsay. They're just asking
- 23 questions.
- 24 THE COURT: Yes, that's true, but I've got to put up
- 25 red lights so that -- you know, I'm sure the witness has been SOUTHERN DISTRICT REPORTERS, P.C.

,864ZKAR2ationu Snowden - direct

- 1 properly instructed she can't --
- 2 MR. EVERDELL: Yes.
- 3 THE COURT: She can't get into statements beyond just
- 4 the question.
- 5 MR. EVERDELL: If I can make sure we're clear on that.
- 6 Q. Ms. Snowden, just referring solely to what questions
- 7 Ms. Hayes asked you, what were those questions?
- 8 A. She asked me a question regarding could rent be paid with
- 9 federal funds; she asked me a question, could utilities be paid
- 10 with federal funds. I responded to her no, neither one can be
- 11 paid with federal funds.
- 12 THE COURT: When was this conversation?
- THE WITNESS: Excuse me?
- 14 THE COURT: When did you have this conversation with
- 15 Ms. Hayes?
- 16 THE WITNESS: In 2002, sometime in 2002. It was with
- Joan Hayes. So she called me on the phone sometime in 2002.
- 18 It was -- once she was -- she was independent CPA, so I guess
- once he picked her to, once she was --
- THE COURT: No, no you -- don't speculate.
- 21 THE WITNESS: Okay.
- 22 THE COURT: The jury is to disregard why, the latter
- 23 part of answer about why she, Joan Hayes, was hired.
- 24 Q. Did there come a time when you received an audit report
- 25 from her?

,864ZKAR2ationu Snowden - direct

- 1 A. Yes.
- 2 Q. And when was that?
- 3 A. June 2003.
- 4 Q. What is the status of the grant to CASI as of today?
- 5 A. It's terminated.
- 6 Q. And do you know the total amount of ATP grant money that
- 7 CASI had drawn down before the grant was shut down?
- 8 A. Over a million dollars.
- 9 MR. EVERDELL: One moment, your Honor.
- 10 THE COURT: Can I just hear that question and answer
- 11 back.
- 12 (Record read)
- 13 THE COURT: What date was it shut down?
- 14 THE WITNESS: We suspends this grant in June of 2003.
- 15 THE COURT: Okay, thank you.
- MR. EVERDELL: Your Honor, I have no further
- 17 questions.
- 18 THE COURT: Should we take the break now or -- I guess
- 19 we better take the break now and be back at 1:00 o'clock -- I
- 20 mean back in ten minutes.
- 21 10 minutes.
- 22 (Jury exits the courtroom)
- THE COURT: 10 minutes. All right.
- MR. RUBINSTEIN: Thank you, your Honor.
- MR. KWOK: Thank you, your Honor.

SOUTHERN DISTRICT REPORTERS, P.C.

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Snowden - direct

- 1 (Recess)
- 2 THE COURT: Get the jurors.
- 3 (Jury entering)
- 4 THE COURT: All right, please be seated.
- 5 Mr. Rubinstein.
- 6 MR. RUBINSTEIN: Yes, your Honor.
- 7 CROSS EXAMINATION
- 8 BY MR. RUBINSTEIN:
- 9 Q. Good morning, Ms. Snowden.
- 10 A. Good morning.
- 11 Q. You work in -- where is your office?
- 12 A. My office is in Gathursburg, Maryland.
- 13 Q. Now, you are the liaison to the recipient of the grants?
- 14 A. Yes.
- 15 Q. And it's your job to interpret the rules and regulation for
- 16 them?
- 17 A. Yes.
- 18 Q. And that's if they call and ask you a particular question
- 19 about a particular rule or regulation, correct?
- 20 A. Yes.
- 21 Q. Now, among the things that -- could we put up Exhibit 4,
- 22 page seven.
- 23 A number of things that the recipient responsibility
- 24 that is in Exhibit 4 is that a -- you were present at the what
- you called the slide show?

- 1 A. The kickoff.
- 2 Q. The kickoff?
- 3 A. Yes.
- 4 Q. The kickoff is a term that's usually referred to football.
- 5 The kickoff on November 8th, I believe 2001, you were present
- 6 and you presented, correct?
- 7 A. Yes.
- 8 Q. And is this a form that you submitted that you used or is
- 9 it a form that either Ms. Lide or Jane Orthwein used?
- 10 A. No, I used this -- this is part of my presentation.
- 11 Q. Okay. Now, this is prior approval, you have to notify a
- 12 grants specialist, right?
- 13 A. For prior approval, notify the grants specialist, yes.
- 14 Q. And among the things you have to notify the grants officer
- for to get prior approval is if you go bankrupt?
- 16 THE COURT: Is what?
- 17 Q. Go bankrupt?
- 18 A. Yes, that's on there, yes.
- 19 Q. When you're bankrupt, you're broke, right; do you need
- 20 prior approval to go broke?
- 21 A. Well, what we say is we know these are commercial companies
- 22 that we're dealing with; therefore, if you see that you've --
- 23 you're having financial difficulties and you're going through a
- 24 bankruptcy process, we'd like to be notified ahead of time.
- Q. Okay. But you tell us that this, that kickoff presentation SOUTHERN DISTRICT REPORTERS, P.C.

1 that you're presenting, that your proposal is the Bible?

- 2 A. Yes.
- 3 Q. And that means the proposal submitted by the grantee,
- 4 correct?
- 5 A. The proposal, yes.
- 6 Q. But that -- and that includes the proposal is really the
- 7 budget, right?
- 8 A. It includes the budget.
- 9 Q. And the budget is subject to all kinds of revisions, is it
- 10 not?
- 11 A. You can propose revisions, but they still must be approved
- in writing by the grant officer.
- 13 Q. And if they're approved in writing by the grant officer --
- 14 A. Uh-huh.
- 15 Q. -- then they become part of your budget, right?
- 16 A. They become an amendment to the original budget, yes.
- 17 Q. And you could revise the budget at the end of your first
- 18 year, can you not?
- 19 A. Yes.
- 20 Q. Because you're given \$800,000 in CASI's case, to spend on
- 21 the project that was approved by ATP, right?
- 22 A. No, it's approved -- it's approved by the grant officer.
- 23 She's the one who has the signature authority to, to authorize
- 24 funds for the federal government. So ATP is the project, but
- 25 the grants officer is a certifying official.

864ZKAR2 Snowden - cross

1 Q. Okay. And the project gives the person, the grantee,

- 2 \$800,000, correct?
- 3 A. The -- the grant officer approves the budget for \$8,000.
- 4 THE COURT: \$800,000.
- 5 A. For \$800,000, approved budget, and it gives the grantee the
- 6 authority to spend what is approved within the budgeted
- 7 categories.
- 8 Q. When you submit a budget, you submit a budget for the total
- 9 of \$800,000 right?
- 10 A. When you propose a change, it's for the total amount of
- \$800,000.
- 12 Q. But your original budget --
- 13 A. Uh-huh.
- 14 Q. -- that you submit --
- 15 A. Uh-huh.
- 16 Q. -- you submit -- CASI submitted a budget for 800,000 and
- the government, whichever agency it was, deposited \$800,000 in
- 18 a bank account for CASI to use?
- 19 A. CASI submitted a budget for a total of \$2 million, with
- 20 money delegated each year. The first year was \$800,000 for
- 21 CASI to use within the approved proposal and the approved
- 22 budget categories. Anything outside of what is approved is
- 23 considered a proposed revision. And if you revise it in any
- 24 way or manner, it needs to be approved in writing by the grant
- 25 officer.

864ZKAR2 Snowden - cross

1 THE COURT: But that applies to the line items, is

- 2 that right?
- 3 THE WITNESS: Yes.
- 4 THE COURT: So \$800,000 comprised of so many line
- 5 items.
- 6 THE WITNESS: Yes.
- 7 THE COURT: Changes in the line items require
- 8 approval.
- 9 THE WITNESS: If they're over 10 percent, yes.
- 10 Q. So, we'll get back to the 10 percent.
- 11 A. Sure.
- 12 Q. But let's -- so if the grantee, while they have a budget
- with line items for various things that adds up to \$800,000,
- 14 right?
- 15 A. Yes.
- 16 Q. If the grantee doesn't spend the 800,000 in the first year,
- what happens to the money?
- 18 A. If he doesn't spend all of the \$800,000, he can request a
- 19 revised budget. His first year will have the actual amounts,
- 20 and the out years which will be year two and three. He can
- 21 incorporate the money that was unspent into years two and
- 22 three. That budget has to be reviewed by the project team, and
- 23 it has to be approved in writing by the grant officer.
- Q. Is there -- have you ever had -- how long have you been
- doing this, Ms. Snowden?

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8047KAK7	Snowden -	Cross

I A. BIGHT AND A HALL YEARS	1	Α.	Eight-and-a-half	years
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- 2 Q. Have you ever had an occasion where a grantee returned
- 3 money to the government that was unused pursuant to the grants?
- 4 A. Yes.
- 5 Q. And on how many occasions?
- 6 A. Well, I've been doing it eight-and-a-half years. Quite a
- 7 bit. A lot of times that you start a project, and you say I
- 8 need this much money, and then you may not use the money, so
- 9 it's returned to the government, and we reput it back into our
- 10 program for future use.
- 11 (Continued on next page)

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SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

- 1 BY MR. RUBINSTEIN:
- Q. And if the money is spent, the \$800,000, in the first year,
- 3 on what is allowable expenditures, that's OK, correct?
- 4 A. If it's spent on allowable approved budget, it is OK.
- 5 Q. Well, Dr. Karron submitted a budget where he was to receive
- 6 \$175,000 in salary, correct?
- 7 A. Yes.
- 8 Q. And that was approved.
- 9 A. Yes.
- 10 Q. If he wanted to increase his salary by \$80,000, which is 10
- 11 percent of the approved budget, to \$255,000, he wouldn't need
- 12 any approval to do that, correct?
- 13 A. He can move it among budget categories without the
- 14 approval, within 10 percent, but he must notify; we ask for
- 15 notification to the federal government.
- 16 THE COURT: Is it 10 percent of the total or is it 10
- 17 percent of the line item?
- 18 THE WITNESS: No, 10 percent of the annual budget,
- 19 which is \$80,000. He can move the line items within 80,000.
- 20 THE COURT: Each title?
- 21 THE WITNESS: Total, so not each. So it can be total.
- 22 So, he can move money to the equipment, money to materials and
- supplies, but it couldn't go over \$80,000.
- 24 THE COURT: In total.
- 25 THE WITNESS: In total.

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 MR. RUBINSTEIN: In other words he would have to --
- THE COURT: \$80,000, could it be allotted to any
- 3 single line item which would bring the line item up to say a
- 4 hundred percent of what the line item was?
- 5 THE WITNESS: It's not usually done, but the 10
- 6 percent rule said he can move it.
- 7 THE COURT: Does he need prior approval for that?
- 8 THE WITNESS: No. We ask that we be notified, but he
- 9 does not need prior approval.
- 10 Q. In the original budget that he submitted, which is in
- 11 evidence as Exhibit 10B, do you have that there, ma'am?
- 12 A. I have a 10A. I don't have a 10B.
- 13 Q. Let me see if I can get somebody to help you get the 10B.
- 14 A. I found 10B. I have it right here.
- 15 Q. Now, in that document, which is in the exhibit book as
- 16 Government Exhibit 10B, on the second page it says personnel,
- 17 correct?
- 18 A. Yes.
- 19 Q. Now, in fact in that budget the project manager,
- 20 Mr. Gurfein, was to get \$100,000, correct?
- 21 A. Yes.
- 22 Q. And that was to put 75 percent of their time, his time,
- 23 into the project.
- A. Well, his annual salary was \$100,000.
- Q. Telling you that he is only going to spend 75 percent of SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

- his time to the project, correct?
- 2 A. That's the percentage of time to the project, 75 percent.
- 3 O. And Dr. Karron is to spend a hundred percent of his time.
- 4 A. Yes.
- 5 Q. And how many hours a week does a hundred percent working,
- 6 how many hours a week --
- 7 THE COURT: I don't see the relevance of that
- 8 question.
- 9 MR. EVERDELL: Objection.
- 10 THE COURT: Objection sustained. Let's go ahead.
- 11 It's an annual amount. Please go ahead.
- 12 Q. Well, did you ever discuss with Dr. Karron as to how many
- hours a week he was expected to devote to the project?
- 14 A. No.
- 15 Q. And also on that page they have \$100,000 which was approved
- 16 for math and graphic programmers, TBD. And that was approved,
- 17 right?
- 18 A. Yes, to be determined.
- 19 O. What does TBD mean?
- 20 A. To be determined.
- 21 Q. And that was approved.
- 22 A. Yes.
- 23 Q. Now, did you learn that there were people in the first year
- 24 who were not listed on this budget that were working at CASI?
- 25 THE COURT: Working at CASI or on the program?

8647KAR3 Snowden - cross

- 1 MR. RUBINSTEIN: On the program.
- 2 A. This narrative reflects that there is going to be one, two,
- 3 three, four people that's going to be working on this project.
- 4 Two people are to be determined. So you have two people that
- 5 they don't have a name. But only four people on this project.
- 6 Q. Well, in fact it has a systems administrator, correct?
- 7 A. Yes.
- 8 Q. It has Dr. Karron.
- 9 A. Um-hum.
- 10 Q. It has Mr. Gurfein.
- 11 A. Yes.
- 12 Q. And it has a math and graphics programmer. Those are the
- 13 two people there, right? So that's a total of five?
- 14 A. No.
- THE COURT: Systems administrator.
- 16 A. The systems administrator, it's a systems administrator
- 17 network programmer. It's one title. This budget only reflects
- 18 four budget, four salaries, so that's one title. That's why it
- 19 was indented.
- 20 Q. There came a time that you learned that there were other
- 21 people working on the ATP project. Did you have any
- 22 conversation with Dr. Karron about these -- well, withdrawn.
- 23 You learned that other people were working on the
- 24 project, correct, on the ATP project?
- THE COURT: Did you learn that?

SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

- 1 THE WITNESS: He requested a revised budget to add
- 2 people that had to be approved, and it was later approved, but,
- 3 no, he can't just tell me I'm adding people.
- 4 THE COURT: That isn't what you are being asked. Did
- 5 you learn that more than four people were working on the ATP
- 6 project at any time?
- 7 THE WITNESS: No, I just assumed that these were the
- 8 four that were going to be working on the project.
- 9 Q. Well, didn't you get together with your team Ms. Lide and
- 10 Ms. Orthwein and discuss what was going on with the CASI ATP
- 11 grant and what was going on at CASI?
- 12 A. We had discussions.
- 13 O. And did you learn in those discussions that there were
- 14 people working on the ATP project who were not approved by your
- 15 office?
- 16 A. No.
- 17 Q. Did you ever hear of a man named Jim Cox?
- 18 A. Yes.
- 19 Q. And was he approved to work on the project?
- 20 A. I don't recall. I would have to look at the other approved
- 21 document.
- Q. Now, Gurfein was approved for \$100,000 --
- 23 A. Yes.
- 24 Q. -- as the project manager. Did you ever approve someone
- 25 else as a project manager after Gurfein?

- 1 A. No, not that I recall.
- Q. Do you know the name Peter Ross?
- 3 A. I'm familiar with the name.
- 4 Q. And do you know who replaced Gurfein when he left the
- 5 project?
- 6 A. There was -- no, I don't know who replaced Gurfein. There
- 7 was never an approved person managing.
- 8 Q. Well, as the person who was involved with helping CASI, did
- 9 you inquire as to who would be the project manager after
- 10 Gurfein left?
- 11 A. Once Lee Gurfein left -- and I'm not sure on the date that
- 12 he left -- it was up to Dr. Karron -- this is a commercial
- 13 business -- to let us know that he was searching for somebody
- 14 to replace Lee Gurfein, and then if he wants that person to
- 15 replace them, officially he has to request it, put in a revised
- 16 budget to add that person's name, and it has to be approved in
- 17 writing by the grant officer.
- 18 So, within his commercial company he can add anyone
- 19 that he likes, but to work on this project it has to be
- 20 approved by the grant officer. So, we don't get into his
- 21 personal, his commercial business. He could have had a lot of
- 22 people working within his company but not necessarily on this
- 23 ATP-approved project.
- 24 Q. Did you ever tell Dr. Karron that you were not approving
- 25 Bob Benedict as a replacement as the project manager?

8647KAR3 Snowden - cross

- 1 A. What happened was --
- Q. No, no. Did you hear the question?
- 3 A. Yeah, I heard the question. No, I never told him that he
- 4 was not going to be approved. The budget was not approved,
- 5 which would have incorporated him. Therefore, underlying he is
- 6 not approved.
- 7 THE COURT: Did he ever ask for him to be approved?
- 8 THE WITNESS: He sent correspondence, and in the
- 9 correspondence he said that Bob Benedict was going to be the
- 10 new project manager, so that's what he wanted. That is who was
- 11 representing CASI as a company, and that's fine, he can
- 12 represent his company, but until he was approved in our budget,
- 13 he wasn't an authorized official.
- 14 THE COURT: Did he ever ask you to approve him in the
- 15 budget?
- 16 THE WITNESS: Yes, he did try to incorporate him into
- 17 the budget.
- 18 THE COURT: What?
- 19 THE WITNESS: Yes, he did try to incorporate him into
- the budget.
- 21 THE COURT: OK.
- 22 Q. But he was never approved?
- 23 A. He was never approved because the budget was never
- approved.
- Q. But he was never approved, correct?

SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

- 1 A. No, he was never approved.
- 2 THE COURT: And when did he ask for him to be
- 3 approved?
- 4 THE WITNESS: There is a letter, and I know it's in
- 5 one of these exhibits, when he told us he was getting a new, I
- 6 guess, administrator.
- 7 THE COURT: I just want to know the date.
- 8 THE WITNESS: I have no idea what the date was.
- 9 THE COURT: Don't you have the records there that show
- 10 it?
- 11 THE WITNESS: OK, I don't know where it would be
- 12 located.
- 13 THE COURT: Well, I can't understand whether the
- 14 question and answer are relevant to the jury's determination.
- 15 Q. CASI was approved to spend \$100,000 on the project manager,
- 16 correct?
- 17 A. Yes, they were approved. The salary was \$100,000, and it
- 18 was a hundred percent, so yes.
- 19 Q. It was in fact 75 percent, right?
- 20 A. It was 75 percent of \$100,000 salary.
- 21 Q. Dr. Karron was not supposed to -- he wasn't being paid as
- the project manager, correct?
- 23 A. Correct.
- Q. You have a business, so is it your testimony that \$100,000,
- 25 because you didn't approve Bob, a project manager during a

8647KAR3 Snowden - cross

1 point in time, that that 100,000 shouldn't be spent on the

- 2 grant?
- 3 MR. EVERDELL: Objection.
- 4 THE COURT: I will allow the question.
- 5 A. Could you repeat the question, please?
- 6 Q. If Lee Gurfein had continued as the project manager after
- 7 the first year, there would be no problem with his being
- 8 approved?
- 9 A. Lee Gurfein was approved throughout this budget, so Lee
- 10 Gurfein was approved.
- 11 Q. Do you know what Lee Gurfein's credentials were to be a
- 12 project manager?
- 13 A. His résumé was part of the proposal package, yes.
- 14 Q. And was Bob Benedict's résumé submitted to propose him as a
- 15 project manager?
- 16 A. I don't recall.
- 17 Q. Isn't it a fact that Bob Benedict was far superior?
- 18 MR. EVERDELL: Objection.
- 19 THE COURT: Objection sustained. Go ahead.
- 20 Q. Do you recall what salary was requested for Bob Benedict?
- 21 A. No.
- 22 Q. Now, were you aware of Dr. Karron's background as to
- finance when the grant was awarded?
- 24 A. No, I'm the grant specialist. When it comes to his
- 25 background, that's not for me to review. I'm the grant

- 1 specialist, I do the budget analysis. I don't look at people's
- 2 backgrounds. I'm sure it was looked at by the scientists and
- 3 the project team who reviewed this proposal and approved it.
- 4 Q. As the grant specialist, could you provide a special
- 5 condition of the award that a grantee be audited more than once
- 6 a year?
- 7 A. As a grant specialist you can incorporate special workd
- 8 conditions that have to be approved by the grant officer, but
- 9 the federal government can authorize an audit any time they
- 10 feel that funds are being misappropriated. So, it can be more
- 11 than once, it could be twice, it could be three times.
- 12 Q. That wasn't the question.
- 13 A. The question is yes.
- 14 Q. The question is: As a special condition, when the person
- 15 gets the money, as a special condition they're advised that
- they are going to be audited more than once a year, correct?
- 17 A. As a special award condition you are audited according to
- 18 your project.
- 19 MR. EVERDELL: Objection.
- 20 THE COURT: Objection sustained to the form of the
- 21 question. I don't think it was --
- 22 Q. Most projects like in this case CASI were audited at the
- 23 end of their first year, correct?
- 24 A. They have to get an independent CPA, they're required to,
- the company, and, yes, they get audited. Within 90 days they SOUTHERN DISTRICT REPORTERS, P.C.

- 1 have to give the federal government a copy of an audit at the
- 2 end of the year, within 90 days after the end of their year.
- 3 O. And are there companies that get ATP awards that as a
- 4 condition of the award they are to be audited more than once a
- 5 year?
- 6 A. Under federal regulations the grant office has the right to
- 7 order an audit by the office of Inspector General whenever they
- 8 feel that funds are being misappropriated, so, yes, across the
- 9 board with any grant of federal funds you can be audited more
- 10 than once a year.
- 11 Q. Do you understand the question, ma'am, about the special
- 12 conditions --
- MR. EVERDELL: Objection.
- 14 Q. -- when you get an award, that there are special conditions
- 15 as part of the award?
- 16 THE COURT: You're not asking your question
- 17 appropriately.
- 18 MR. RUBINSTEIN: Then it's my fault. I apologize to
- 19 Ms. Snowden.
- 20 THE COURT: I think she is answering the question as
- 21 she interprets it, but you have to ask the question properly.
- 22 Q. As part of the grant, giving a grant, can there be special
- 23 conditions imposed on the grantee?
- 24 THE COURT: This woman does not make the grants; she
- is a person who oversees a grant once it's made. Am I correct?

8647KAR3 Snowden - cross

- 1 THE WITNESS: Yes.
- 2 THE COURT: You don't determine whether or not the
- 3 grant will be issued, is that right?
- 4 THE WITNESS: Yes.
- 5 THE COURT: That's done by someone else in the --
- 6 THE WITNESS: Another team reviews the proposal and
- 7 decides to give the money, and then our office administers it.
- 8 THE COURT: Is that clear? Did you follow that,
- 9 Mr. Rubinstein? She does not make the grant. All she does is
- 10 administer a grant once it is made. Another team decides about
- 11 making the grant.
- 12 Q. But there are situations, are there not, Ms. Snowden, where
- 13 you who administers the grant has -- there are in place special
- 14 conditions that you have to administer, right?
- MR. EVERDELL: Objection.
- 16 THE COURT: I will allow the question.
- 17 A. Could you repeat the question, please?
- 18 THE COURT: In some grants are there special
- 19 conditions that you have to administer?
- 20 THE WITNESS: In some grants you have special work
- 21 conditions. In all grants there are special work conditions
- incorporated into the grant.
- 23 Q. And from time to time is one of the special conditions that
- the grantee, the person getting the money, will be audited more
- 25 than once a year?

- 1 THE COURT: Do you know the answer to that? Have you
- 2 ever had a grant that had a special condition in it that
- 3 required the company to provide an audit more than once a year?
- 4 THE WITNESS: No. You are program specific, so up
- 5 front you consider that everything is going to go smoothly, so,
- 6 no, there is not -- you just follow the audit guidelines, so,
- 7 no, there is not a special work condition that is usually put
- 8 in place that you have an audit. We do have conditions that we
- 9 can -- you can't -- you can't take any money without getting
- our approval, but when it comes to audits, no.
- 11 Q. You said that Ms. Hayes was an independent auditor,
- 12 correct?
- 13 A. Yes.
- 14 Q. You had contact with Ms. Hayes?
- 15 A. Yes.
- 16 Q. Over what period of time did you have contact with Ms.
- 17 Hayes?
- 18 A. The year 2002, over a period of time.
- 19 Q. Do you have any notes or memorandum that would enable you
- 20 to be a little more precise as to what period of time in 2002?
- 21 A. No, I don't.
- 22 Q. Now, could you estimate for us how many times you spoke to
- 23 her during this period in 2002?
- 24 A. Probably a handful of times, so guestimate five.
- Q. And among the times you spoke to her, I think you said you SOUTHERN DISTRICT REPORTERS, P.C.

- 1 spoke to her about the rent and some other expense, correct,
- 2 whether or not it was allowable?
- 3 A. She called and asked me a question, yes.
- 4 Q. And when about was that, ma'am?
- 5 A. In 2002.
- 6 Q. Was it the winter? Spring? Summer or fall?
- 7 MR. EVERDELL: Objection.
- 8 THE COURT: Do you know?
- 9 THE WITNESS: No. I mean you have to -- you can
- 10 assume that the year ended September 30, 2002, so it's anything
- 11 after September 30, 2002, when the grant ended and when you are
- 12 supposed to get an independent auditor to audit your books.
- THE COURT: She was an auditor?
- 14 THE WITNESS: Yes.
- 15 THE COURT: So you assumed she came in after the end
- of the year.
- 17 THE WITNESS: Yes.
- 18 Q. Were you aware that she was the accountant for CASI?
- 19 A. That she was the independent auditor for CASI, independent
- 20 CPA. She was doing the audit.
- 21 Q. But you are supposed to have an independent auditor,
- 22 correct?
- 23 A. You have to get an -- the federal grant pays for an
- independent auditor to audit the books, yes.
- Q. And is it fair to say that a person who is the accountant SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

1 for the company cannot be an independent auditor for the

- 2 company?
- MR. KWOK: Objection, your Honor.
- 4 MR. EVERDELL: Objection, your Honor. It's outside of
- 5 the --
- 6 THE COURT: Do you know whether she was an accountant?
- 7 THE WITNESS: I didn't know she was an accountant to
- 8 the company. All I know is that she called me as an
- 9 independent CPA for the company, and that's who she was
- 10 representing the company as an independent. Any other, I have
- 11 no idea.
- 12 Q. And you are aware of requests for change in costs for
- 13 equipment to be changed, is that correct?
- 14 A. I am aware that there was a request to add a piece of
- 15 equipment.
- 16 Q. And was that approved?
- 17 A. No.
- 18 Q. And was the reason it wasn't approved is because the
- 19 request wasn't in writing?
- 20 A. The reason why it wasn't approved -- he sent in a revised
- 21 budget. I had questions for the budget that he sent in. He
- 22 sent me another budget. So, he frequently sent in budgets, so
- 23 none of them ever got approved.
- Q. But he had a right to spend up to \$80,000 in additional
- 25 monies for equipment without approval, correct?

- 1 A. He had a right to move additional money within 80 percent
- of the annual budget without approval but with notification,
- 3 but it has to -- you can spend it within the budget, but you
- 4 can't add items to the budget.
- 5 When you come in with a proposal, you have an itemized
- 6 budget down to, for example, the pencils you want to buy.
- 7 That's the only thing approved within that budget, so you can't
- 8 just arbitrarily go out and say I want to buy a computer if a
- 9 computer wasn't incorporated and approved within your approved
- 10 budget. The categories have to already exist. You can't add
- 11 categories. If it's a zeroed out category, you can't add that.
- 12 So, then he would already have to be approved.
- 13 Q. Did the CASI budget have a category called equipment?
- 14 A. Yes, they did.
- 15 Q. Did you testify that they had originally \$375,000 approved
- 16 for the purchase of equipment?
- 17 A. I would have to look at it to know exactly what it says.
- 18 Q. But do you recall testifying that they submitted a revision
- 19 for reduction in the equipment when the prosecutor asked you
- 20 questions?
- 21 A. He asked me questions. But like I said, what exhibit? So
- 22 I can look. I want to make sure I'm correct. Tell me the
- 23 exhibit and we can talk about it.
- 24 Q. Well, before you look at an exhibit, are you aware as you
- 25 sit there now that there was in the budget a category for

8647KAR3 Snowden - cross

- 1 equipment?
- 2 A. Yes.
- 3 MR. EVERDELL: Objection.
- 4 THE COURT: Which budget are you talking about?
- 5 MR. RUBINSTEIN: All of the budget submitted by CASI.
- 6 MR. EVERDELL: Objection, your Honor. The documents
- 7 are in evidence. We can look at the documents.
- 8 THE COURT: Let's deal with it document by document so
- 9 the jury can follow it.
- 10 MR. RUBINSTEIN: Can I please do it my way? It might
- 11 be a little faster than taking out documents.
- 12 MR. EVERDELL: Your Honor, I think it would be
- 13 confusing.
- MR. RUBINSTEIN: Confusing?
- 15 Q. Does every budget for CASI have a line for equipment? Yes
- 16 or no?
- 17 THE COURT: Yes.
- 18 MR. RUBINSTEIN: Thank you, Judge.
- 19 THE COURT: Every budget has an item for equipment and
- 20 a number in it.
- MR. RUBINSTEIN: Thank you, Judge.
- 22 THE COURT: All right.
- MR. RUBINSTEIN: So, do I have to show each one of
- those on the screen?
- THE COURT: Which one do you want?

SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

1 Q. So, there was already established an equipment line,

- 2 correct?
- 3 A. According to testimony, yes, there was, and the judge said
- 4 there was, and there is.
- 5 Q. You don't recall testifying to that with the prosecution
- 6 asked you questions?
- 7 A. I testified to the fluctuation of the monetary values in
- 8 each category. I have to look at a budget as I would do in my
- 9 office, and I can tell you specifically. But there is a lot of
- 10 budget here.
- 11 Q. So, now that we concede that equipment is in the budget,
- 12 Dr. Karron did not need your approval if he was buying a piece
- 13 of equipment that cost less than \$80,000 above whatever the
- 14 number is that he was budgeted for equipment, right?
- 15 A. He did not need my approval, but the equipment that he
- 16 requested was over 10 percent. That's why he had to put in and
- 17 request a revised budget. If it was just within the 80,000, I
- 18 would never have told him you have to revise your budget.
- 19 Therefore, it was over \$80,000.
- 20 Q. What was that piece of equipment that he was requesting?
- 21 A. I don't recall.
- Q. Do you have any note about it anywhere?
- 23 A. No.
- Q. Do you have any e-mail about that?
- 25 A. No, I don't.

- 1 Q. You told us about --
- 2 THE COURT: Do you know what type of equipment it was?
- 3 THE WITNESS: No, I just know it was over the 10
- 4 percent. That's why I told him, when we discussed it, that he
- 5 had to do a revised budget, because under the 10 percent I
- 6 would have said just give us notification and we could have
- 7 moved on. It was over 10 percent.
- 8 Q. So, with a significant revised budget did you approve that
- 9 amount for the equipment that he had requested?
- 10 A. The first? No.
- 11 Q. Even though -- did you make an evaluation as to whether or
- 12 not that equipment would aid and assist the project that he was
- 13 working on?
- 14 A. When you do a revised budget you not only look at that one
- 15 line, I look at all the line items, because I have to make sure
- 16 that none of the numbers change and that at the end of the day
- that everything still equals to the amount of money for that
- 18 annual year. The numbers fluctuated. I looked at them, and I
- 19 had to look at what he had attached, so it never got approved
- 20 because there were other changes in the budget that we didn't
- 21 know about.
- 22 O. He never asked for more than \$800,000 though, correct?
- 23 A. It doesn't make a difference.
- Q. Did he ever ask for more than \$800,000, yes or no?
- 25 A. He never asked to exceed the annual approved amount for SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

- 1 that year.
- THE COURT: Which was 800,000.
- THE WITNESS: Which was 800,000, yes.
- 4 Q. So you could not -- could you approve -- if he submitted
- 5 ten requests for revisions, could you approve one and reject
- 6 nine, or do you have to accept them all to get the revision?
- 7 MR. EVERDELL: Objection.
- 8 THE COURT: The manner in which this comes to your
- 9 attention is by way of a proposed revised budget.
- 10 THE WITNESS: Yes.
- 11 THE COURT: Is doesn't come in single items.
- 12 THE WITNESS: No, it comes in a budget, and every
- 13 category has a number in it, and they all have to equal.
- 14 THE COURT: But in addition you received an oral
- 15 request, is that right, from Dr. Karron for equipment?
- 16 THE WITNESS: No. What he did -- after Jay and B.J.
- did the site visit, he called me and said he wanted to add
- 18 funds for equipment, and so then I told him, I said since you
- 19 want to add money, I said --
- You ask how much it is, and I don't recall the amount.
- I said, well, that's over \$80,000, you must submit a revised
- 22 budget.
- 23 THE COURT: Approximately when was that conversation?
- 24 THE WITNESS: In November of 2002, soon after the site
- 25 visit.

8647KAR3 Snowden - cross

1 THE COURT: But then you never got a proposed budget

- 2 incorporating that \$80,000 request.
- THE WITNESS: The change was more than \$80,000. It
- 4 was well over 80,000.
- 5 THE COURT: You never got a proposed budget --
- 6 THE WITNESS: I got a request for a revised budget.
- 7 So, I don't look at --
- 8 THE COURT: Let me ask a question.
- 9 THE WITNESS: OK.
- 10 THE COURT: Did you ever get a proposal in writing in
- 11 a revised budget for an additional purchase of equipment over
- 12 \$80,000?
- 13 THE WITNESS: Yes.
- 14 THE COURT: You did. Which budget did you get that
- 15 in?
- 16 THE WITNESS: The next budget, so it came in November,
- so it probably had to be the October 20 budget in 2002. That
- 18 would be the budget, because that would be the budget after.
- 19 THE COURT: That's Exhibit --
- 20 MR. RUBINSTEIN: 31, I believe, your Honor.
- 21 THE COURT: 35? 45?
- 22 THE WITNESS: No, there is another one for October, so
- I have to tell you which one.
- MR. RUBINSTEIN: Are you looking for the October 2002,
- 25 Ms. Snowden?

8647KAR3 Snowden - cross

- 1 THE WITNESS: Yes.
- 2 MR. RUBINSTEIN: That is Government Exhibit 32.
- THE WITNESS: 32?
- 4 THE COURT: Which item are you referring to there?
- 5 THE WITNESS: The question was about the equipment.
- 6 And if you see the equipment category it's like \$303,400, so I
- 7 would look in the one that's previous, the approved one. So,
- 8 you know that that category it's well over \$80,000. So, we can
- 9 look in any approved budget.
- 10 THE COURT: I'm looking here. I'm looking at Exhibit
- 11 32.
- 12 THE WITNESS: Yes.
- 13 THE COURT: And the equipment numbers in Exhibit 32
- 14 are \$303,400 in year one.
- 15 THE WITNESS: Right.
- 16 THE COURT: In year one. In year two it's \$133,000.
- 17 And I'm looking back to Exhibit 1, and the equipment is
- 18 \$250,000, which is \$53,000 less than the amount in Exhibit 32,
- 19 so in year two it's \$133,000, which is over \$120,000 higher
- than the amount in Exhibit 31.
- 21 THE WITNESS: Right. So it's over \$80,000. He has to
- 22 get approval.
- THE COURT: That's for year two.
- 24 THE WITNESS: We're only looking at year one right
- 25 now, because --

8647KAR3 Snowden - cross

1 THE COURT: I'm looking at both of them, and you're

- 2 not listening to me.
- 3 THE WITNESS: OK.
- 4 THE COURT: All right? I'm looking at Exhibit 32.
- 5 THE WITNESS: I'm looking at Exhibit 32.
- 6 THE COURT: That's \$303,400.
- 7 THE WITNESS: Yes.
- 8 THE COURT: And Exhibit 31 is \$250,000 in year one.
- 9 THE WITNESS: If you can bear with me, these are not
- in order. I need to get 31 so we can -- here we go.
- 11 THE COURT: 250,000, is that right?
- 12 THE WITNESS: Right, 250,000.
- 13 THE COURT: And this budget for August 1, 2002 is
- 14 approved, isn't that right?
- 15 THE WITNESS: No.
- 16 THE COURT: No? It wasn't?
- 17 THE WITNESS: No.
- 18 THE COURT: Do I have to go back to Exhibit 30? Which
- 19 one was approved.
- 20 THE WITNESS: It's amendment 2 that was --
- 21 THE COURT: Where do I see that?
- THE WITNESS: Yeah, amendment 2 was the last approved
- 23 budget.
- 24 DEPUTY COURT CLERK: Is that 22? Is that Government
- 25 Exhibit 22?

SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

- 1 THE WITNESS: It said amendment 2 on the front of it.
- 2 THE COURT: I want to know what one was approved.
- 3 THE WITNESS: OK. The last approved budget was
- 4 amendment 2.
- 5 THE COURT: The one that says submitted -- oh, come
- 6 on.
- 7 THE WITNESS: Right, it's Exhibit 22.
- 8 DEPUTY COURT CLERK: Government 22.
- 9 THE COURT: This is January 17, 2002?
- 10 THE WITNESS: Yes.
- 11 THE COURT: And that had a figure or a number of
- 12 \$110,000.
- 13 THE WITNESS: Yes.
- 14 THE COURT: So, what you are saying is that you should
- 15 look at Exhibit 22 --
- 16 THE WITNESS: Yes.
- 17 THE COURT: -- and then compare Exhibit 22 with
- 18 Exhibit 33 -- 32.
- 19 THE WITNESS: Well, August 2002 is Exhibit 31. That
- 20 would be the first time that I received the budget that I
- 21 questioned.
- 22 THE COURT: What I want to know is what test you
- 23 applied on the request for additional equipment. Did you look
- 24 to the prior approved budget?
- THE WITNESS: Yes.

SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

1 THE COURT: So, you looked at Exhibit 22, is that

- 2 correct?
- 3 THE WITNESS: Yes.
- 4 THE COURT: And you saw that the amount for equipment
- 5 in year one was \$110,000.
- 6 THE WITNESS: Yes.
- 7 THE COURT: And then when you looked at Exhibit 32,
- 8 which contained the request, you say --
- 9 THE WITNESS: No, first it's going to be Exhibit 31.
- 10 THE COURT: Exhibit 31.
- 11 THE WITNESS: Because that's August 2002. That will
- 12 be the next budget.
- 13 THE COURT: So, that's the time that he made the
- request for the additional equipment?
- 15 THE WITNESS: Oh, you know what, you're totally right,
- 16 because of this, it would be October -- you're right. 32.
- 17 Sorry about that, because that would be in October. You're
- 18 correct. Yes.
- 19 THE COURT: So, when you looked at Exhibit 32 -- or
- 20 maybe when you looked at Exhibit 31 you looked at the
- 21 difference between \$110,000 in Exhibit 22 the approved budget
- and the entries in Exhibit 32 of \$303,000.
- THE WITNESS: Yes.
- 24 THE COURT: 110 to 303.
- 25 THE WITNESS: Yes.

SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

1 THE COURT: And that was over \$80,000?

- THE WITNESS: Yes.
- 3 THE COURT: OK, all right. I just wanted to
- 4 understand what process you used in determining that.
- 5 BY MR. RUBINSTEIN:
- 6 Q. Now, as far as fringe benefits, there was an approved
- 7 budget, was there not, in November of 2001?
- 8 A. The original approved budget was dated September of 2001.
- 9 That was incorporated into the document that CASI signed
- 10 October 5, 2001.
- 11 Q. Wasn't there a revision of --
- 12 THE COURT: What exhibit are we dealing with here?
- 13 The jury has to follow this. What exhibit is it? They might
- 14 want to look at their books to see what you are talking about.
- MR. RUBINSTEIN: I'm trying.
- 16 THE COURT: Is that the one exhibit 21?
- 17 THE WITNESS: No, Exhibit 21 is the first amendment,
- 18 so it would have to be I guess 20.
- 19 THE COURT: Was the first amendment approved?
- 20 THE WITNESS: The original document was approved.
- 21 THE COURT: Was Exhibit 21 approved is what I'm asking
- 22 you.
- THE WITNESS: Exhibit 21 was approved.
- 24 THE COURT: And the original document was Exhibit 14?
- THE WITNESS: I'm looking.

SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

1 THE COURT: I'm just asking. I don't know.

- 2 Q. Exhibit 21, ma'am, is the first revised --
- 3 THE COURT: Well, let's get an answer first to what
- 4 was the original budget.
- 5 THE WITNESS: Exhibit 14.
- 6 THE COURT: All right, that's the original budget. Go
- 7 on from there, Mr. Rubinstein. I turn it over to you.
- 8 Q. OK. Exhibit 21 was the first amended budget, correct?
- 9 A. Yes.
- 10 Q. And it is dated 10/24/01, signed by Dr. Karron 11/7/01,
- 11 correct?
- 12 A. Yes.
- 13 O. What were the amendments that were made to the budget at
- 14 that time?
- 15 A. There was no changes to the budget at that time.
- 16 Q. That was the time that Gurfein's name was changed, correct?
- 17 A. Yes.
- 18 Q. The next one is 22. It's amendment number 2 dated January
- 19 4, '02.
- 20 A. That's when my former supervisor signed it, yes.
- 21 Q. And in that amendment they're asking to reduce salaries
- 22 from 375 to 325,000, right?
- 23 A. Yes.
- 24 Q. And they want to reduce fringe benefits from 127,500 to
- 25 10,500, right?

8647KAR3 Snowden - cross

- 1 A. 110,500.
- 2 Q. And equipment they want to reduce 10,000, from 120 to
- 3 110,000.
- 4 A. Yes.
- 5 Q. And they want to increase subcontractors from 200,000 to
- 6 250,000.
- 7 A. Yes.
- 8 Q. And the net total is that the same amount of money is being
- 9 spent, correct, the \$800,000?
- 10 A. It stays within the 800,000 but it's over 10 percent change
- in the annual year, so it's over \$80,000 of changes.
- 12 Q. Which category was changed by \$80,000?
- 13 A. It's not per category, it's per annual budget.
- 14 Q. When you talk about the 10 percent, you are talking about
- 15 an increase, correct?
- 16 A. No, the 10 percent is a change within the annual budget of
- 17 over 10 percent.
- 18 Q. Is it giving 10 percent more money than you had before?
- 19 A. The annual budget remains the same, but it's when you
- 20 change categories. You can make the changes but if it's
- over -- for example, year one, if it was over \$80,000, if you
- 22 look at the changes that was requested it was well over
- 23 \$80,000, and that's why he had to request and get an approved
- 24 revised budget narrative. The changes have to be 10 percent or
- 25 greater within all categories.

8647KAR3 Snowden - cross

- 1 Q. Changes of more money spent in a particular category.
- 2 A. No, it could be more, it could be taking money away. It's
- 3 changes in general, changes period.
- 4 Q. Any time you increase a category, you have to take away
- 5 from another category in order to stay within the 800,000,
- 6 correct?
- 7 A. Yes.
- 8 Q. Now, in that year they reduced the fringe benefits to
- 9 \$110,000, correct?
- 10 A. Yes.
- 11 Q. And did you have any discussions -- when you had the
- 12 kick-off on November 8, 2001, was there discussions about
- 13 fringe benefits?
- 14 A. Not specifically.
- 15 Q. And did you ever have any discussion with Dr. Karron as to
- 16 fringe benefits that you recall?
- 17 A. No.
- 18 Q. Did you ever have any conversations with Lee Gurfein as to
- 19 fringe benefits?
- 20 A. No.
- 21 Q. Did you ever have any conversation with Joan Hayes as to
- 22 fringe benefits?
- 23 A. No.
- 24 THE COURT: You are talking during the course of
- 25 the --

8647KAR3 Snowden - cross

- 1 MR. RUBINSTEIN: During the course of the grant.
- THE COURT: Is this before or after the kick-off?
- 3 Does it include at the kick-off, any discussion of fringe
- 4 benefits?
- 5 THE WITNESS: No.
- 6 Q. At any time up until you last spoke to anybody from CASI,
- 7 did you ever have any discussions about the fringe benefits?
- 8 A. No. There is regulations to regulate that.
- 9 Q. So when they lowered the fringe benefits for 2001 by
- 10 \$17,000, they could have increased the salary by 17,000 at that
- 11 time, correct?
- 12 A. There is reasons for why he did what he did in this
- 13 exhibit.
- 14 THE COURT: But --
- 15 Q. I'm not talking about a particular exhibit, ma'am.
- 16 A. You're referring to --
- 17 THE COURT: We are talking about the 17,000.
- 18 MR. RUBINSTEIN: Talking about the 17,000.
- 19 THE WITNESS: Exhibit 22, 17,000, yeah.
- 20 O. Right.
- 21 A. So, he deducted fringe benefits of 17,000 because personnel
- was decreased, so the fringe benefits went down.
- 23 Q. He could use the 17,000 someplace else, correct?
- 24 A. Yes, he can use it somewhere else.
- 25 O. Now, you told us that you had these discussions with

SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

- 1 Gurfein about the rent, correct?
- 2 A. Yes.
- 3 O. And that was early on in the grant?
- 4 A. The discussion was before the kick-off presentation and
- 5 after the kick-off presentation, so in October and in November.
- 6 Q. 2001.
- 7 A. 2001.
- 8 Q. And then --
- 9 THE COURT: You had those with Gurfein.
- 10 THE WITNESS: With both Gurfein and Dr. Karron.
- 11 Q. And you told them -- and I think you testified that they
- 12 double teamed you.
- 13 A. Yes.
- MR. EVERDELL: Objection.
- 15 Q. They kept asking and calling about the same request about
- 16 the rent, right?
- 17 A. They asked the same questions and received the same answer.
- 18 Q. Same answer was?
- 19 A. Same response from me is no.
- 20 Q. And then when Hayes called in the fall of 2002 --
- 21 THE COURT: I think it's after. Her testimony is that
- it occurred after the end of the fiscal year.
- 23 MR. RUBINSTEIN: Right, which is the fall of 2002,
- 24 after October 1st.
- THE COURT: It might be winter.

SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

- 1 Q. Your audit is due at the end of the year, right?
- 2 A. The audit is due 90 days after the end of award period.
- 3 Q. Right. After the first year?
- 4 A. Of year one, which ended September 30, 2002.
- 5 Q. And is it fair to say that Hayes called between September
- 6 30, 2002 and the end of that year 2002 and asked you about the
- 7 deductibility of the rent, correct?
- 8 A. It's fair to say that within that time period I was called
- 9 by Joan Hayes and she did ask about the rent.
- 10 Q. And in your discussions with either Lee Gurfein or Dr.
- 11 Karron about the deductibility of the rent did you suggest to
- 12 either of them that they could increase Dr. Karron's salary and
- 13 he could pay the rent out of an increase in salary?
- 14 A. No.
- 15 Q. I mean he could do anything he wants with his \$175,000 that
- 16 he gets paid in the initial year, correct?
- 17 A. If he gets a paycheck, just like me and you when we get our
- 18 paycheck, you can do whatever you want with it once you're paid
- 19 for services rendered.
- 20 Q. And in fact you approved the second year budget for CASI,
- 21 did you not?
- 22 A. Yes, I think funds for year two was approved.
- 23 Q. And did there come a time --
- 24 THE COURT: When would that have been?
- THE WITNESS: I would have to look at the amendment,

 SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

1 but we usually approve the funds for the following year months

- ahead of time, but they cannot spend that amount of money until
- 3 their second year begins. So, for example, you could have
- 4 approved it in June, but there would be a clause that says
- 5 although we're obligating authorizing money June 1, it can't be
- 6 spent until your next year starts, which would have been
- 7 October 1. So, it's authorized ahead of time, but it can't be
- 8 spent until the new year starts.
- 9 THE COURT: Thank you.
- 10 Q. Now, did there come a time that you learned that Dr. Karron
- 11 had taken any loan from the funds, the ATP funds of \$75,000?
- 12 A. I heard -- I wasn't --
- THE COURT: No. Did you --
- 14 THE WITNESS: Did I ever hear that?
- 15 THE COURT: In your capacity.
- 16 THE WITNESS: I heard that.
- 17 Q. And did you have any conversations with Dr. Karron about
- 18 that \$75,000?
- 19 A. No.
- THE COURT: When did you hear it?
- THE WITNESS: From Joan Hayes.
- 22 THE COURT: What?
- 23 THE WITNESS: From Jones Hayes the auditor.
- 24 THE COURT: Approximately when did you hear it?
- 25 THE WITNESS: So it would be November 2002, within

SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR3 Snowden - cross

- 1 that time.
- 2 Q. November what?
- 3 A. During the audit, which would be any time after September
- 4 2002, during the audit period of the independent CPA.
- 5 Q. Did you ever have a conversation with Dr. Karron telling
- 6 him it was inappropriate to take that check of \$75,000? Did
- 7 you ever tell him that?
- 8 A. I never talked to Dr. Karron about the check.
- 9 Q. And did you ever request of Dr. Karron that he return the
- 10 funds to the project?
- 11 A. No.
- 12 Q. Did you speak to federal agents in Gaithersburg? That's
- where your office is, Gaithersburg?
- 14 A. I'm located in Gaithersburg, Maryland.
- 15 Q. Gaithersburg. And did you speak to agent Rachel, better
- 16 known as Rachel Garrison?
- 17 A. Rachel.
- 18 Q. Rachel. Did you speak to letter?
- 19 A. Yes, I have spoken to her.
- Q. Did you speak to her on September 8, 2003?
- 21 A. I spoke to her during that period. I don't know the exact
- date, but September 2003, yes.
- 23 Q. And when you spoke to her in September of 2003, that would
- 24 be prior to the time you spoke to Joan Hayes about the \$75,000,
- 25 correct?

8647KAR3 Snowden - cross

- 1 A. I spoke to Joan Hayes first.
- Q. Didn't you tell us -- I'm sorry, you're right. I stand
- 3 corrected. Thank you.
- 4 Did you tell agent Garrison that you told Dr. Karron
- 5 that it was inappropriate for him to write himself a check for
- 6 \$75,000 out of project funds to cover disallowed costs? On
- 7 September 8, 2003.
- 8 A. I don't recall that conversation.
- 9 Q. Well, let me show you this document.
- 10 A. Sure.
- 11 Q. It's marked as Government Exhibit 3504-A. I direct your
- 12 attention to the third paragraph there.
- 13 DEPUTY COURT CLERK: It's not in the book.
- 14 MR. RUBINSTEIN: These are government documents that
- 15 are not in the book. Would your Honor instruct the jury about
- 16 3500 material?
- 17 THE COURT: You want an instruction?
- 18 MR. RUBINSTEIN: About 3500 material, because the
- 19 jurors don't have it in their book.
- 20 THE COURT: 3500 material is material which in this
- 21 case the government turns over to the defense relating to all
- 22 the documents that might possibly be in some way relevant to
- 23 the testimony of the witness, and defense gets a copy of that
- 24 to aid them in their examination of the witnesses. But they're
- 25 not admitted in evidence, because although they may be able to

1	use them for cross-examination purposes, they may not be
2	admissible in evidence for a number of legal reasons. But they
3	are but they but it is discovery that the government is
4	obliged to provide to the defendants in all criminal cases.
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Snowden - cross

8647KAR3

864ZKAR4 Snowden - cross

1 Q. I show you that document, I show you that document, 3504 --

- 2 A. Yes.
- 3 0. -- 8.
- 4 A. Uh-huh.
- 5 Q. And does that refresh your recollection first that you had
- 6 this conversation with --
- 7 A. It -- yes.
- 8 Q. Pardon?
- 9 THE COURT: With whom?
- 10 Q. With the agent would, was then known as Garrison, who I
- 11 understand she got married and she now is Orthwein?
- 12 A. No.
- 13 THE COURT: The question is --
- 14 Q. And I direct -- I'm sorry. All right. Does that refresh
- 15 your recollection of that conversation?
- 16 A. Yes, it does.
- 17 Q. On September 8th, 2003, correct?
- 18 A. Yes.
- 19 Q. And did you tell the agent that you spoke to Dr. Karron and
- requested the return of funds, of the \$75,000?
- 21 A. I made the statement, yes. Because this wasn't part of his
- 22 salary. This was just money he took out of the grants as a
- 23 whole. This wasn't a salaried money. This was grant money
- that was to be used for the direct project cost.
- Q. You just said before that you never had conversations with SOUTHERN DISTRICT REPORTERS, P.C.

864ZKAR4 Snowden - cross

- 1 Dr. Karron about this \$75,000, correct?
- 2 A. Yes. I said I didn't recall having a conversation with Dr.
- 3 Karron. Yes.
- 4 Q. Are you aware that the money was paid back in August?
- 5 THE COURT: Do you have a recollection now that you --
- 6 THE WITNESS: Yeah.
- 7 THE COURT: Did you have a conversation with him?
- 8 THE WITNESS: Now that I'm reading this, yes.
- 9 THE COURT: Not --
- 10 THE WITNESS: Yes, I --
- 11 THE COURT: You're not to answer the question based on
- 12 what's in the document.
- 13 THE WITNESS: Okay.
- 14 THE COURT: The question is, do you now remember that
- in fact you did have a conversation with Dr. Karron?
- 16 THE WITNESS: Yes.
- 17 THE COURT: Regardless of the document?
- 18 THE WITNESS: Yes.
- 19 THE COURT: You do remember, okay.
- 20 Q. And --
- 21 THE COURT: Do you remember when that conversation
- 22 was?
- THE WITNESS: I would -- 2003.
- 24 THE COURT: All right.
- 25 O. When in 2003?

864ZKAR4 Snowden - cross

- 1 A. I don't recall.
- Q. Did you -- was it the early part of 2003?
- 3 A. I don't recall.
- 4 Q. Was it before you sent the letter asking for an audit of
- 5 CASI to the OIG?
- 6 A. No. I would not have known it before the audit.
- 7 Q. The audit by OIG?
- 8 THE COURT: What audit are you referring to, the audit
- 9 by Miss Hayes or the audit by OIG?
- 10 THE WITNESS: The audit by Miss Hayes.
- 11 Q. So could you estimate when you had this alleged
- 12 conversation with Dr. Karron?
- 13 A. No.
- 0. Did you ask Dr. Karron for return of the funds?
- 15 A. Yes.
- 16 O. And did Dr. Karron return the funds?
- 17 A. Not to my knowledge.
- 18 Q. Did you follow up on getting these funds returned?
- 19 A. During this time September 8th of 2003, I had, I had no
- 20 contact with Dr. Karron.
- Q. Did you report this to your superior, Ms. Goldstein?
- 22 A. She was aware of this, of the situation at hand.
- Q. Did you report it to her, ma'am?
- 24 A. Yes.
- 25 Q. Is there any writing of you reporting this to Miss

SOUTHERN DISTRICT REPORTERS, P.C.

864ZKAR4 Snowden - cross

- 1 Goldstein?
- 2 A. No, there's no writing. It's verbal conversation.
- 3 Q. Is there any writing to the OIG which indicates that Dr.
- 4 Karron took \$75,000 as personal money?
- 5 THE COURT: Is there any what?
- 6 Q. Did you write anything to the OIG?
- 7 A. I did not write anything to the OIG. I don't recall
- 8 writing anything to the OIG.
- 9 Q. Now, you tell us that -- have you ever been to CASI's
- 10 headquarters at 300 East 33rd Street?
- 11 A. No.
- 12 O. Pardon?
- 13 A. No.
- 14 Q. So it's fair to say that you have no idea what kind of
- 15 construction, if any, was done there, correct?
- 16 A. Correct.
- 17 Q. Now, under the terms of the budget, I direct your attention
- 18 to the exhibit 35. And this is a standard form, is it not, for
- 19 each year of the budget?
- 20 MR. EVERDELL: Your Honor, I object. This is not an
- 21 approved budget, Judge.
- MR. RUBINSTEIN: Pardon?
- THE COURT: It's not a budget.
- MR. RUBINSTEIN: It's a proposed budget.
- 25 THE COURT: You referred to it as the budget.

SOUTHERN DISTRICT REPORTERS, P.C.

864ZKAR4 Snowden - cross

- 1 MR. RUBINSTEIN: I'm sorry.
- 2 Q. Proposed budget. Is that correct, ma'am?
- 3 A. This is a proposed budget.
- 4 O. And whose forms are these?
- 5 A. The forms that are attached are government forms.
- 6 Q. So they're supplied to the grants recipient, these forms,
- 7 right?
- 8 A. They're part of your -- the package, yes. When the grant
- 9 decides that they want to apply for proposal, they get a
- 10 proposal kit, and these forms are incorporated into that kit.
- 11 Q. And do you want to turn to paragraph D where it says,
- 12 equipment; see that, ma'am?
- 13 A. Yes.
- 14 O. And reading from the fifth line from the bottom of that
- 15 paragraph: ATP funds may, however, be used for construction of
- 16 experimental research and development facilities to be located
- 17 with a new or existing building, provided the equipment or
- 18 facilities are essential for carrying out the project. If such
- 19 costs are proposed, include it below and provide justification.
- 20 Is that correct?
- 21 THE COURT: What page are you on?
- 22 MR. RUBINSTEIN: It's paragraph D, your Honor, of
- 23 that -- these are -- I don't know if they're numbered or --
- it's paragraph D at the top of the page. It says "equipment".
- 25 Q. Is that correct, ma'am?

864ZKAR4 Snowden - cross

- 1 A. I don't see -- I'm not following where this says that.
- 2 Because if you look at the attachment, which is D, that's also
- 3 incorporated into this.
- 4 THE COURT: Wait a minute. Let's make sure you're
- 5 looking at what he wants you to be looking at.
- 6 THE WITNESS: Right.
- 7 Q. See at the top of the page it says D, in bold print,
- 8 equipment?
- 9 A. Yes.
- 10 Q. Go down five lines from the bottom, where the sentence
- 11 starts, ATP funds may, however, be used?
- 12 A. Okay, yes, I see that.
- 13 Q. You see that? For construction of experimental research
- 14 and development facilities to be located with a new or existing
- 15 building, provided the equipment or facilities are essential
- 16 for carrying out the project, if such costs are proposed,
- include below provide justification?
- 18 A. Yes, I see that.
- 19 O. You see that?
- 20 A. Yes.
- 21 Q. Is it fair to say that not all construction costs are not
- 22 allowable under the grant, correct?
- 23 A. We don't -- if you read above that, funds may not be used
- 24 for construction of new buildings or extensive renovations of
- 25 extension -- of extending -- of existing laboratory buildings.

864ZKAR4 Snowden - cross

- 1 Q. But they may be expended. And it says may, however;
- they're giving you an exception?
- 3 A. If costs are proposed, include and provide a justification.
- 4 So if they were closed and they were approved, that's may --
- 5 it -- they may be approved, they may not be approved. But in
- 6 this instance, they're not a part of this proposal.
- 7 Q. Well, this proposal here is the wrong year, okay. That's
- 8 2002, correct?
- 9 A. This is a proposed budget -- this right here is a form.
- 10 This is a form. This has nothing to do with the proposal.
- 11 This right here is a form that's used no matter what year
- 12 you're in. This is a template.
- 13 Q. But that template --
- 14 A. Uh-huh, is always used.
- 15 Q. -- is provided by the government?
- 16 A. Yes.
- 17 Q. That happens to be for 2002, not 2001, correct?
- 18 A. No, no. It's the same. No. It's the same template used
- 19 for 2001, 2002, 2003. It's an existing template.
- 20 Q. Right. But it's filled in. There are lines filled in?
- 21 A. It's filled in for the proposed budget of 12/24/02. It's
- 22 filled in. But this is the same template that would be for
- 23 2000, 2001, 2002, and 2003. It's a template that's used as
- 24 part of the proposal package, no matter what years it's in.
- 25 Q. The template does not include, ma'am --

864ZKAR4 Snowden - cross

- 1 A. Excuse me?
- Q. The numbers that are filled in, right, grantee, right;
- 3 underneath you see under D, it says methodology? Those numbers
- 4 are not part of a template, are they, adding up to \$95,900?
- 5 That's not a template.
- 6 THE COURT: Where are you reading?
- 7 MR. RUBINSTEIN: I'm on the same page.
- 8 THE COURT: Locate her the page.
- 9 MR. RUBINSTEIN: The same page.
- 10 A. But when you ask about this, you asked me about the wording
- 11 within D, equipment. You didn't ask me about the numbers on
- 12 there. You asked me about the wording and how they were
- interpreted. And I just commented on the wording and told you
- 14 that these, this wording is templated for all years in all the,
- in all the awards as part of your kit.
- 16 Q. Did you discuss this at the kickoff, this paragraph, at the
- 17 kickoff on November 8th, 2001?
- 18 A. There was no need for discussion. There was no
- 19 construction.
- 20 THE COURT: I'm lost here, Mr. Rubinstein. Exhibit D
- 21 from, you've been reading from.
- 22 MR. RUBINSTEIN: No, no. It's not exhibit D, your
- 23 Honor. It's paragraph D.
- 24 THE COURT: Paragraph D, entitled equipment.
- 25 THE WITNESS: Yes.

864ZKAR4 Snowden - cross

- 1 THE COURT: Exhibit.
- 2 MR. RUBINSTEIN: 35.
- THE COURT: 35.
- 4 MR. RUBINSTEIN: Right.
- 5 THE COURT: And then after the, what seems to be form
- 6 language in the form, there is a total underneath of \$231,714.
- 7 But up above it says, see attached exhibit. And I don't see
- 8 the attached exhibit. So I can't determine and make any
- 9 determination what it is you're talking about.
- 10 MR. RUBINSTEIN: Judge, my question only related to
- 11 the fact that the witness insisted that this was all a
- 12 template, and I want to show it's not just a template, it's
- 13 information in -- in -- that is in addition to the template
- 14 letter. That's all the purpose of the question was.
- 15 THE COURT: I'm not sure you have established that.
- 16 So let me understand what you're saying. Is there a dispute
- 17 between you and the witness as to what appears in the first
- 18 full paragraph there?
- MR. RUBINSTEIN: We agree on --
- 20 THE COURT: Before we get to item methodology
- 21 computation and cost?
- 22 MR. RUBINSTEIN: We agree that the words that I spoke
- are in the document that she has.
- Q. We're in agreement, correct, Ms. Snowden?
- THE COURT: Yes.

864ZKAR4 Snowden - cross

- 1 Q. I read correctly from that document?
- 2 A. I agree that you read them correctly from the document.
- 3 Q. Thank you.
- 4 THE COURT: And that that paragraph, as I understand
- 5 it, is part of the government form that is submitted --
- 6 THE WITNESS: Yes.
- 7 THE COURT: -- to the grantee to fill out.
- 8 THE WITNESS: Yes.
- 9 THE COURT: So is there any dispute about that, Mr.
- 10 Rubinstein? I just --
- MR. RUBINSTEIN: Not at all.
- 12 THE COURT: What?
- MR. RUBINSTEIN: None at all. I just wanted to
- 14 show --
- 15 THE COURT: I don't see any dispute between you and
- the witness, so please go ahead.
- 17 BY MR. RUBINSTEIN:
- 18 Q. Now Dr. Karron, did there come a time he requested that --
- 19 can I have that document, back, ma'am, that 3504 that I gave
- 20 you?
- 21 (Handing)
- 22 Q. Now, in these discussions that you had with Dr. Karron
- 23 about, rent and utilities aside, did you say anything else
- other than no, when he asked you about the grant money covering
- 25 rent and utilities?

864ZKAR4 Snowden - cross

- 1 A. I said no.
- Q. Did you discuss this with Miss Goldstein, the supervisor --
- 3 A. Yes.
- 4 Q. -- the fact that Ms. Goldstein advised you that if CASI got
- 5 commercial space and if they made a lease in the name of the
- 6 grant ATP, DMT, that that would be an acceptable expense?
- 7 A. No, it's not an acceptable expense.
- 8 Q. No, no. Did you have that discussion with Ms. Goldstein?
- 9 Did you -- did Ms. Goldstein tell you that?
- 10 A. No.
- 11 Q. Did you ever tell Dr. Karron that, why don't you increase
- 12 your salary and pay it out of your salary, this rent figure?
- 13 A. Never.
- 14 Q. Did Dr. Karron advise you at any time that the rent monies
- 15 that were being paid were being paid for a time period before
- the ATP grant, and it was back rent owed?
- 17 A. No.
- 18 Q. So it was your understanding, when you spoke to Dr. Karron,
- 19 that he was talking about current rent while he was receiving
- 20 funds from ATP?
- 21 A. It was to my understanding that he was asking to pay for
- 22 current, current -- use current funds to pay for rent, and the
- 23 current funds were direct costs. You can not use -- you can't
- use ATP money. Once he rendered services and he had a pay
- 25 check at the end of the day, he could do whatever he wanted.

864ZKAR4 Snowden - cross

1 But he could not charge this grant for direct as a -- rent as

- 2 direct cost of this project.
- 3 O. Is it a fact that, that funds, that pre-grant -- in other
- 4 words, this grant started October 1st, 2001?
- 5 A. Uh-huh.
- 6 Q. That there were startup costs anticipated prior to the time
- 7 that the grant was actually formally approved, correct?
- 8 A. No.
- 9 Q. Well, isn't it a fact that a grantee can pay pre-grant
- 10 expenses related to the grant, but that there is no obligation
- 11 for NIST to repay those monies?
- MR. EVERDELL: Objection.
- 13 THE COURT: Objection sustained to the form of the
- 14 question.
- 15 Q. Is it a fact, ma'am, that pre-grant expenses, in other
- 16 words, in this case expenses incurred prior to October 1st,
- 17 2001, that were for items or materials related to the ATP
- grant, are allowed to be charged to the grant?
- 19 A. No.
- 20 Q. What if you buy a piece of equipment on September 30th,
- 21 2001 for the grant's use, it gets delivered on October 2, 2001,
- 22 you pay for it on October 3, 2001, is that expense an allowable
- 23 expense or non-allowable expense?
- 24 A. Non-allowable. You don't even have a grant until
- October 1, 2001. And according to the funding limitation

864ZKAR4 Snowden - cross

1 clause that's incorporated into this grant, funds can only be

- 2 expended during a period of time. And the period of time for
- 3 this particular grant was starting October 1, 2001 through
- 4 September 30th, 2002. So that's when funds are to be expended,
- 5 and that is all documented as part of special work conditions,
- 6 which supersede other regulations incorporated to this grant.
- 7 O. Are you familiar with Federal Register Volume 66, November
- 8 1M?
- 9 THE COURT: Have you ever heard of that?
- 10 THE WITNESS: I mean, I need a title. I mean, he
- 11 could at least give me a title or a CFR, some kind of
- 12 federal -- some guidelines.
- 13 Q. Well, did you send an e-mail on August 17th, 2006 about
- 14 5:53 p.m. to Agent Ondrik and c.c. it to Marilyn Goldstein?
- 15 A. There's a possibility. I don't recall. This is --
- 16 Q. Let me show you what's been --
- 17 A. Okay.
- 18 Q. -- marked as government exhibit 3504/C.
- 19 By the way, your e-mail address is Hope.Snowden@NIST.
- 20 Gov, correct?
- 21 A. Yes, that's correct.
- 22 THE COURT: You want to show --
- MR. EVERDELL: She's reading.
- 24 THE COURT: Show -- all right, good.
- 25 A. Okay. Okay.

864ZKAR4 Snowden - cross

- 1 Q. Is that your e-mail, ma'am?
- 2 A. This is my e-mail.
- 3 O. And are the words contained therein, words that you sent in
- 4 that e-mail?
- 5 A. These are words that I sent in my e-mail.
- 6 Q. May I have the document, please, ma'am.
- 7 (Handing)
- 8 Q. Did you, in that e-mail, say costs -- write: Costs
- 9 incurred before the project, Federal Register, January 2, 2001,
- 10 Volume 66, Volume 1M. states, preaward activities, applicants
- 11 or institutions who incur any cost prior to an award being
- 12 made, do so solely at their own risk of not being reimbursed by
- 13 the government. Notwithstanding any verbal assurance that may
- 14 have been provided, there is no obligation on the part of NIST
- 15 to cover the preaward cost. This notice is applicable to this
- 16 award.
- 17 Did you --
- 18 THE COURT: Anything else? There does seem to be
- 19 another --
- 20 A. Is there a question with that? Because I wrote that and
- 21 under there, up underneath there it also says, we do not pay
- 22 preaward costs, which are considered sunk costs.
- 23 Q. Sunk costs --
- 24 THE COURT: That's s-u-n-k cost?
- THE WITNESS: Yes, yes.

864ZKAR4 Snowden - cross

1 Q. And, in fact, what I just read says that you do, on

- 2 occasion, pay pre-grant costs, correct?
- 3 A. It says that we, the government, has no -- we have no
- 4 obligation to pay. So it doesn't say that we pay it. It says
- 5 we --
- 6 Q. Does it say you don't pay it?
- 7 A. It says we don't have any obligation.
- 8 Q. Does it say you do not pay it; yes or no?
- 9 A. No. But the sentence under that says that we don't pay it,
- 10 the sentence right under that.
- 11 Q. You know what sunk cost is, ma'am?
- 12 A. To -- we interpret it as pre-award cost, cost that you
- incurred before you were given a proposal. That's how --
- 14 that's the interpretation.
- 15 Q. That's just your interpretation?
- 16 A. That's the ATP interpretation, and it's also located in a
- 17 regulation and it says sunk costs.
- 18 Q. And is it fact that sunk costs is costs that you already
- 19 paid out of your pocket prior to the time that the grant
- starts, and that there's -- isn't that correct?
- 21 A. Sunk costs is any cost that you incur prior to a proposal
- or contract or what have you.
- 23 THE COURT: Proposal being approved.
- 24 THE WITNESS: Right. It's unapproved cost. Because
- you really don't even know if you're going to get the proposal,

864ZKAR4 Snowden - cross

1 so you are just spending money at your own risk if you're ever

- 2 going to receive it.
- 3 THE COURT: Go ahead.
- 4 Q. When was Dr. Karron notified, officially, that he received
- 5 this award, that CASI received this award?
- 6 THE COURT: Do you know of your own knowledge?
- 7 THE WITNESS: My own knowledge is that it was sent out
- 8 probably around very the end of September. So he should have
- 9 gotten it October 1st, 2001.
- 10 Q. And when is a decision made by ATP as to who is going to be
- 11 a recipient of an award?
- 12 A. Depends on when the proposals are being read, and then
- 13 decisions are made later on.
- 14 But no proposer can ever know that they receive a
- 15 grant until appropriations are approved. And appropriations is
- 16 the money that we're given for the these competitions. So,
- 17 basically, you go through a competition, you go through
- 18 everything, and you get -- you get all your clearances, and
- 19 appropriations -- Congress can still say at the end of the day,
- you've done all this work and we don't have money. So until
- 21 you receive that paper document in your hand, that's the only
- 22 notification that you get knowing that you received this award.
- 23 You get no other notification, 'cause we don't know till the
- last minute. Everything is sitting out there waiting, and it's
- 25 signed. It cannot be mailed until we are notified we can mail SOUTHERN DISTRICT REPORTERS, P.C.

864ZKAR4 Snowden - cross

- 1 out these documents.
- Q. Don't you have a \$60 million appropriation in 19, in 2001
- 3 to give to people who receive awards?
- 4 A. I don't know how much was allocated in 2001.
- 5 Q. Are you telling this jury that people go through all kinds
- of submissions and at the end of the day there's no money
- 7 there; is that what you're telling this jury?
- 8 A. No. I'm telling the jury that we receive over 300 or more
- 9 proposals, and that at the end of the day nobody knows. We
- 10 have to get notification. The person who is going to receive
- 11 that award does not know until he receives the paper document.
- 12 He doesn't -- he, she, the company does not know. Until you
- 13 receive something in the mail, you're one of -- you could be
- 14 one of a million applicants. You don't know until you receive
- 15 that document in the mail, so you're just, you're unaware. The
- 16 money --
- 17 Q. What if I have a friend at ATP and I called my friend and I
- 18 say, did I get the award?
- 19 THE COURT: Objection sustained to the form of the
- 20 question.
- 21 MR. EVERDELL: Objection.
- 22 Q. Do you know whether or not --
- 23 THE COURT: It's a hypothetical question. Let's --
- Q. Do you know whether or not Dr. Karron has a personal
- 25 relationship with Mark Stanley?

864ZKAR4 Snowden - cross

- 1 A. Not --
- 2 THE COURT: Objection -- do you know?
- 3 A. Not to my knowledge. I have no idea.
- 4 THE COURT: All right, okay.
- 5 Q. You don't know one way or the other?
- 6 A. No.
- 7 Q. Correct? Now --
- 8 THE COURT: Have you got any other questions?
- 9 MR. RUBINSTEIN: Yes, your Honor.
- THE COURT: Have you got much more?
- 11 MR. RUBINSTEIN: Yes, a different topic.
- 12 THE COURT: What?
- MR. RUBINSTEIN: Different topic.
- 14 THE COURT: Have you got much more?
- 15 MR. RUBINSTEIN: I think I have enough, Judge, that if
- 16 your Honor wants to break for lunch now for everybody, I think
- it would be appropriate time.
- 18 THE COURT: I think we better break and come back at
- 19 five minutes after two.
- 20 (Jury exits the courtroom)
- 21 THE COURT: You can step down.
- THE WITNESS: Thank you.
- 23 THE COURT: Is there anything to take up?
- 24 MR. KWOK: Not from the government at this moment.
- MR. RUBINSTEIN: Not from the defense, your Honor.

SOUTHERN DISTRICT REPORTERS, P.C.

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1 THE COURT: How much longer are you going to be, Mr.

- 2 Rubinstein?
- 3 MR. RUBINSTEIN: I don't think I should be more than a
- 4 half-hour, Judge, tops.
- 5 THE COURT: Redirect?
- 6 MR. EVERDELL: Your Honor, I have a few things to
- 7 cover, I think to clarify. Maybe 15 minutes. I'll try to keep
- 8 it as brief as possible.
- 9 THE COURT: All right. Well, we may have to run a
- 10 little late today.
- 11 MR. EVERDELL: I'll try to be as brief as I can.
- 12 THE COURT: All right. Thank you.
- 13 (Luncheon recess)
- 14 AFTERNOON SESSION
- 15 2:05 p.m.
- 16 THE COURT: Good afternoon. Okay, is Robert here?
- 17 Five after two.
- 18 MR. RUBINSTEIN: Your Honor, I have a housekeeping
- 19 matter that I have to address the Court on.
- THE COURT: Yes, sir.
- 21 MR. RUBINSTEIN: I am an attorney in a 62 defendant
- 22 case in the Eastern District of New York, and a plea has been
- 23 worked out with the government that if 52 of the 62, I think
- the number is, defendants plead guilty, they're going to be
- afforded three points reduction for global plea.

864ZKAR4 Snowden - cross

- 1 They have scheduled my plea for 5:00 o'clock this
- 2 afternoon in the Eastern District. I want to ask your Honor if
- 3 it's possible for me to be -- for us to break at 4:00 o'clock,
- 4 so that I could handle the plea there.
- 5 THE COURT: I don't see a problem. I might go a
- 6 couple minutes after, but let's see if we can get these people
- 7 in. Who is it before?
- 8 MR. RUBINSTEIN: It's before Magistrate Judge Levy.
- 9 It's actually, the case is before Judge Weinstein, but he has
- 10 the plea taken by a magistrate judge.
- 11 THE COURT: I see.
- 12 MR. RUBINSTEIN: Who doesn't like to stay past 5:00
- o'clock.
- 14 THE COURT: Doesn't, the magistrate Judge doesn't?
- 15 MR. RUBINSTEIN: I heard what you said about the
- 16 probation departments, Judge. I'm not going to say anything
- 17 about the magistrate judges.
- 18 THE COURT: Well, where is Robert? Not here. I'll go
- 19 in and see. I'll do it. I'll see if they're ready.
- THE DEPUTY CLERK: I'll check.
- 21 THE COURT: The jury is coming in.
- 22 (Jury entering)
- 23 THE COURT: Please be seated. Please proceed, Mr.
- 24 Rubinstein. Oh, the witness, the witness.
- 25 MR. RUBINSTEIN: I could start without her, Judge.

SOUTHERN DISTRICT REPORTERS, P.C.

864ZKAR4

Snowden - cross

- 1 (Witness resuming the witness stand)
- THE COURT: Mr. Rubinstein.
- 3 MR. RUBINSTEIN: Yes.
- 4 Q. Good afternoon, Ms. Snowden.
- 5 A. Good afternoon.
- 6 Q. Earlier today the government discussed with you exhibit 30
- 7 which is a -- which is the letter from -- memorandum from your
- 8 boss, Marilyn Goldstein, dated August 16th, 2003, correct?
- 9 A. No. It's a memorandum for Marilyn, not from her.
- 10 Q. Okay. For her?
- 11 A. Uh-huh.
- 12 Q. And, in fact, the letter provides that there are five
- 13 budget revisions?
- 14 A. It says there's quite a few budget revisions.
- 15 Q. And, in fact, all of those budget revisions apply to the
- 16 first year of the grants, is that correct?
- 17 A. No.
- 18 Q. Does it say at the top line in five communications, copies
- 19 attached. CASI has requested ATP approve the revised budget
- 20 listing actual costs for year one.
- Isn't that what they say, all these revisions relate
- 22 to the first year?
- 23 A. No. I mean, the first question you asked me were are the
- 24 revisions in year one and I told you no.
- 25 THE COURT: Are you asking whether the memorandum says SOUTHERN DISTRICT REPORTERS, P.C.

1 that or are you asking the witness for her recollection of the

- 2 budgets?
- 3 Q. You testified on direct examination --
- 4 THE COURT: I just want to know which you're asking
- 5 because it's not clear.
- 6 Q. I'm asking -- isn't it a fact, ma'am, that the five
- 7 revisions submitted on behalf of CASI dated August 1st, 2002,
- 8 October 20th, 2002, December 2nd, 2002, December 20th, 2002,
- 9 and February 25th, 2003, all relate to the first year of the
- 10 grants?
- 11 A. No, they don't. The first year of the grant ended
- 12 September 30th, 2002. These exceed that date.
- 13 Q. Are you familiar with the budget revisions?
- 14 A. Yes, I am.
- 15 Q. And are you familiar with the -- that you can revise a
- 16 budget after the first year?
- 17 A. Yes, you can revise a budget after the first year.
- 18 Q. So isn't it a fact that this memorandum talks about
- 19 revising the budget for the first year?
- 20 A. No. It says has -- after these dates, it says has
- 21 indicated on the last four of the submissions that the first
- 22 year's cost lists are actual.
- 23 So, basically, it's stating that these budgets
- 24 represent revisions and there were revisions made to year one,
- 25 but year one was over. So they should have been actual

864ZKAR4 Snowden - cross

- 1 numbers. That's what this is saying.
- 2 Q. If CASI had submitted one budget revision instead of five
- 3 with five different numbers --
- 4 THE COURT: No hypotheticals, please.
- 5 MR. RUBINSTEIN: Okay. You're right, Judge.
- 6 Q. So it's your testimony that the five dates when budget
- 7 revisions were submitted, they were submitted for year other
- 8 than -- ending October -- September 1st, 2002?
- 9 MR. EVERDELL: Objection.
- 10 THE COURT: I think her testimony speaks for itself
- 11 and I'm going to sustain the objection. Let's have another
- 12 question.
- 13 O. What year was -- the revised budget for February 25th, that
- 14 was submitted February 25th 2003, what year was that revision
- 15 request for?
- 16 A. This revision request was still unapproved budget that had
- 17 started in October 20th of 2002. But I continuously receive
- 18 revised budgets within short periods of time that were never
- 19 ever approved. So it was just, he'd send me one and then a
- 20 week or later I get another one. But they all started from
- 21 original, the original October 20th. So it was -- one
- 22 originated, I had questions, then he revised them and sent me
- 23 another budget. I had other questions because there was other
- changes, and so it continued on, until this ward was suspended.
- 25 O. The award was suspended on June 27th, '03, correct?

864ZKAR4 Snowden - cross

- 1 A. June -- yes.
- Q. The question is, ma'am, the year that these requests for
- 3 budget revisions, what year are these requests for, the first
- 4 year, the second year, the third year of the grant?
- 5 THE COURT: Mr --
- 6 MR. EVERDELL: Objection.
- 7 THE COURT: Mr -- the budget covers three years. Each
- 8 budget covers three years.
- 9 MR. RUBINSTEIN: The revision --
- 10 THE COURT: It's the grant budget covers three years.
- 11 If you want to frame your question right, frame it with respect
- 12 to the first year, and ask her a questions about the first year
- 13 and whether there were revisions there. There are revisions in
- 14 other years as well as the first year, in order to end up with
- 15 a total amount of the grant.
- 16 Q. You can't move money between years, can you, in the
- 17 budgets?
- 18 A. When one -- when one year ends; for example, if year one
- 19 ends or it's getting ready to end, you can request -- if all
- 20 the money wasn't expended within that year, you can request to
- 21 carry over money to the second year. So that means your year
- 22 one would have all your actuals, and then you would take the
- 23 money that you're not going to use and you can carry it over
- 24 into year two.
- 25 But when -- if year one had totally totally ended, you SOUTHERN DISTRICT REPORTERS, P.C.

864ZKAR4 Snowden - cross

- 1 can not carry any of that, those funds over, none. So if you
- 2 request for revision before that year ends, and say I see that
- 3 it's now the end of my period, I'm not going to spend \$100,000,
- 4 I would like to revise and carry it over to year two, you're
- 5 allowed to do that. But once the year ends, it's ended, you
- 6 can't have any revisions once the date has expired.
- 7 O. Year one ended September 30th, 2002, correct?
- 8 A. Yes.
- 9 Q. Budget was approved for the year starting October 1st, 2002
- 10 ending September 30th, 2003, correct?
- 11 A. No. There wasn't another approved budget. The last
- 12 approved budget, which was amendment to, was still in effect.
- 13 There was no other budgets approved.
- 14 What happened -- what you're talking about is that we
- 15 obligated money for the second year during that funding period.
- 16 O. Right.
- 17 A. Under --
- 18 Q. You gave that money to CASI for the second year, \$600,000
- 19 and change, correct?
- 20 A. We authorized that money starting October 1st, 2002 for the
- 21 purposes of spending it according to the revised budget of
- amendment two.
- 23 Q. Were any of the five revisions referred to in government
- 24 exhibit 30 related to year two?
- MR. EVERDELL: Objection.

SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 THE COURT: Look through them. Look through them and
- 2 see if there are any revisions to year two. You can compare it
- 3 what, 21 to --
- 4 THE WITNESS: Yeah, 32 starts year two, that's going
- 5 to be within that period, exhibit 32.
- 6 THE COURT: What were you comparing to do -- to
- 7 determine this?
- 8 THE DEPUTY CLERK: I would have to look at exhibit 32
- 9 because year two started and the original budget.
- 10 THE COURT: All right. And what's -- original budget
- is exhibit 21; is that the one you're talking about?
- 12 THE WITNESS: No, there's no budget in 21, so let's
- 13 look at --
- 14 THE COURT: What exhibit number is it?
- 15 THE WITNESS: If you look at exhibit 14.
- 16 THE COURT: All right.
- 17 THE WITNESS: That's the original budget.
- 18 THE COURT: All right. 14 and 32, is that correct?
- 19 THE WITNESS: Yes, I can, I can do a comparison there.
- 20 THE COURT: Any changes in the second year?
- 21 THE WITNESS: Yes.
- THE COURT: Tell us what they are.
- 23 THE WITNESS: The personnel -- there were personnel
- 24 changes from the original to the, the requested revised
- 25 personnel changes. The personnel went down. Your fringe

- 1 benefits went down in the revised, proposed revised budget that
- 2 was not approved. Travel decreased in the proposed revised
- 3 budget that was not approved. Equipment increased in the
- 4 proposed revised budget that was not approved.
- 5 You have money that is incorporated for material and
- 6 supplies. In the original budget there was zero for material
- 7 and supplies. Then you have your subcontractor. Your
- 8 subcontractor, it decreased in the revised unapproved budget.
- 9 The other changed. It increased in the unapproved
- 10 budget. And that's it. So those changes for every category,
- 11 there were proposed changes for every category.
- 12 Q. And they were based upon the actuals, correct?
- 13 A. They couldn't be based on the actuals. Because if you look
- 14 at -- if you compare year one to year one, year one should have
- 15 been actuals, not year two. Year one and year one, they have
- 16 changes too.
- 17 Q. You received the audit in June of 2003?
- 18 A. Yes.
- 19 Q. And do you know when Dr. Karron or CASI received a copy of
- 20 that audit from Joan Hayes?
- 21 A. No.
- 22 Q. Did you have a discussion, prior to receiving the audit,
- 23 with Dr. Karron as to the lateness of the submission of the
- 24 audit?
- 25 A. Yes, I did have a discussion with him about the lateness of SOUTHERN DISTRICT REPORTERS, P.C.

- 1 the submission of the audit.
- Q. Because the audit was due within 90 days after the end of
- 3 the first year, correct?
- 4 A. Yes.
- 5 Q. That would take you till the end, December 31st, 2002,
- 6 correct?
- 7 A. Yes.
- 8 Q. And they had received an extension of that, correct?
- 9 A. Yes. They asked for a 60 day extension.
- 10 Q. And they got 60 day extension?
- 11 A. Yes.
- 12 Q. And you still hadn't received the budget after 60 days,
- 13 correct?
- 14 A. Yes.
- 15 Q. And because that would take you till the beginning of
- 16 March, right?
- 17 A. End of February, beginning of March, yes.
- 18 Q. And in fact that Dr. Karron asked you if he could fire
- 19 Hayes?
- 20 A. He never asked me could he fire Joan Hayes.
- 21 Q. Isn't the expense of the audit a deductible expense from
- 22 NIST?
- 23 A. When you propose your budget, you incorporate -- there is a
- 24 price associated with the audit under other for years one and
- year three, and that's in your original proposed budget, and SOUTHERN DISTRICT REPORTERS, P.C.

- 1 that was approved.
- Q. So that's an authorized expense --
- 3 A. It's authorized.
- 4 Q. -- on the budget, right?
- 5 A. Yes, it is.
- 6 Q. And did you tell Dr. Karron, we paid for the budget for the
- 7 audit and we want it?
- 8 A. I asked, after 60 days --
- 9 Q. Did you tell Dr. Karron -- you hear the question? Did you
- 10 tell Dr. Karron --
- 11 A. I'm answering your question. After 60 days --
- 12 THE COURT: Wait, let him ask the question.
- 13 THE WITNESS: Okay, all right.
- 14 Q. You paid for the budget for the audit and you want it; did
- 15 you say that, yes or no?
- 16 A. Yes.
- Q. And, in fact, monies had been spent and give to Joan Hayes
- 18 for the audit, correct?
- 19 A. I don't know what was done within his corporation.
- 20 Q. Now, and in fact the grant was suspended because of the
- absence of the cofunding portion, correct?
- 22 A. It was suspended because of noncompliance, which
- 23 corresponded with the required cost share that was not paid.
- 24 Q. Now, did you have discussion with Dr. Karron about the use
- 25 of equipment as a portion of the cost share contribution?

- 1 A. No.
- 2 Q. Did you have discussions with Marilyn Goldstein as to the
- 3 costs share contribution of preowned equipment?
- 4 A. No.
- 5 Q. I show you what's been marked in evidence, I'm sorry, is
- 6 marked for identification as Government's 3504/M and ask you if
- 7 you recognize this document, ma'am?
- 8 A. Yes, I recognize this document.
- 9 Q. Can I have it back, please?
- 10 A. Sure.
- 11 Q. Thank you.
- 12 And this is a letter that's written to Dr. Karron?
- 13 A. Yes.
- 14 Q. On July 25th, 2003, right?
- 15 A. Yes.
- 16 Q. From your boss, Marilyn Goldstein?
- 17 A. From my former supervisor, yes, it is.
- 18 Q. Now, by the way, did you have contact with Dr. Karron after
- the grant was suspended on June 27th, 2003?
- 20 A. I probably had limited contact with him after, after it was
- 21 suspended.
- 22 Q. Now, government exhibit -- had you had contact with this
- Bob Benedict before the grant was suspended?
- 24 A. Yes, I think I did. I'm -- I don't recall.
- Q. Well, in fact, in Government's 48 is the letter that he SOUTHERN DISTRICT REPORTERS, P.C.

- 1 wrote on August 13th, 2003?
- 2 A. Okay.
- 3 Q. Correct?
- 4 A. Yes.
- 5 Q. And there were -- you testified as to revisions in the
- 6 financial status reports; recall that?
- 7 A. Yes.
- 8 Q. And those reports, you're supposed to submit a financial
- 9 status report every quarter, every three months?
- 10 A. Yes.
- 11 Q. And, in fact, CASI had submitted such reports, correct?
- 12 A. Yes.
- 13 Q. And who receives those reports?
- 14 A. I do.
- 15 Q. And how much was -- and those are our exhibits 41, the
- 16 original report?
- THE COURT: Start with 40 to 46, is that correct?
- MR. RUBINSTEIN: Yeah.
- 19 THE COURT: The revisions are 48, 41A, 42A.
- 20 Q. The first -- in exhibit 40, do you have that, ma'am?
- 21 A. Yes.
- 22 Q. They show the -- and we're talking about, I, the cost share
- 23 outlay?
- 24 A. Yes.
- Q. The first year it's reported at \$12,320?

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 A. First quarter is reported.
- 2 Q. First quarter, rather?
- 3 A. Yes.
- 4 Q. And then the second line on that -- the third line on that
- 5 page shows you total so far, correct? That's what was the
- 6 amount that was paid for the year?
- 7 A. Would you tell me what number --
- 8 Q. There are three columns.
- 9 A. There is three columns. Is it a, b, c?
- 10 Q. Right. No, there's -- my eyes aren't so good. You see it
- 11 says, previous report, this period cumulative report?
- 12 A. Uh-huh, yes.
- 13 Q. So that because this was the first report, the same number
- 14 \$12,320 is this report, and the total amount they're claiming
- 15 cumulative is 12 --
- 16 A. Yes.
- 17 Q. -- 320. And you reviewed that report?
- 18 A. Yes.
- 19 Q. How long after you received it did you, would you say you
- 20 reviewed it? You don't have to give me a specific date.
- 21 A. Maybe within 30 days.
- 22 Q. Okay.
- 23 A. Because the report is for the quarter ending December 31st,
- 24 2001, the date at the bottom says January 10th. So you gave
- 25 time that it was mailed in. So we have -- probably within 30 SOUTHERN DISTRICT REPORTERS, P.C.

864ZKAR4 Snowden - cross

- days of when it came into my office.
- Q. Okay. Now, in government exhibit 41, that's the original
- 3 financial status report that's submitted for the second
- 4 quarter?
- 5 A. Yes.
- 6 Q. And that is on line I, they have \$9,582.58, which was
- 7 previously reported, correct?
- 8 A. That -- well, that's an incorrect number.
- 9 Q. I agree with you, but that's what's reported?
- 10 A. On this revised budget --
- 11 Q. This is not revised. This is the original.
- 12 A. 41.
- 13 Q. The second quarter?
- 14 THE COURT: 41?
- 15 THE WITNESS: Right.
- 16 0. 41?
- 17 A. Yes.
- 18 Q. They say that there was --
- 19 A. Uh-huh.
- 20 Q. -- 9,582.58, right, that was reported what we now know as
- 21 government exhibit 40?
- 22 A. Yes.
- 23 Q. When in fact there it was actually \$12,320 that should have
- 24 been there?
- 25 A. Yes.

864ZKAR4 Snowden - cross

1 Q. And then they showed an additional 8,213.64, right?

- 2 A. For the current period.
- 3 O. The current period. Then they total the 9,000 and 8,000
- 4 and they get 17,796.22, correct?
- 5 A. Yes.
- 6 Q. And that number is wrong, right; correct?
- 7 A. I have to do the math.
- 8 Q. I mean if the 12 -- no. If it should have been 12,000 for
- 9 the --
- 10 A. Ultimately, yes.
- 11 Q. -- first quarter, then that number would be wrong?
- 12 A. Yes.
- 13 Q. Okay. Nobody commented on that to CASI, correct, that
- 14 there was, these reports, these financial status reports were
- 15 inconsistent and inaccurate?
- 16 A. Yes, there were comments on it.
- 17 Q. Where were comments made?
- 18 A. Excuse me?
- 19 O. Where were comments made?
- 20 A. Probably verbal. They were probably -- the -- what I
- 21 usually do if there is a budget that comes in that's wrong,
- 22 I'll just give the company a call and say, your numbers are
- wrong, please revise and resend your document.
- 24 THE COURT: Did you make that call?
- 25 THE WITNESS: Yes.

864ZKAR4 Snowden - cross

1 THE COURT: Are you sure you made that call?

- 2 THE WITNESS: Yes.
- 3 THE COURT: Yourself?
- 4 THE WITNESS: Yes.
- 5 THE COURT: You told them the first quarter was wrong?
- 6 THE WITNESS: Yes, even -- one -- I think the numbers
- 7 are -- the dates were wrong too. Yes, I'm sure I made the
- 8 call.
- 9 Q. Who did you speak to?
- 10 A. Usually when I would call the doctor -- I probably --
- 11 usually I would speak to Lee Gurfein.
- 12 Q. And did you memorialize that in any way with an e-mail that
- 13 you had made that call?
- 14 A. No.
- 15 Q. Did you put anything in your government file to indicate
- 16 that you had made the call because you noticed these numbers
- 17 were wrong?
- 18 A. The practice is that I would put this document in the file,
- 19 make a note to it, and then when a new form came in, I would
- 20 just discard the old form and put in the correct form.
- 21 Q. Well, did a new form come in?
- 22 A. This -- a new form, a new form came in.
- 23 Q. How long after you claim you made this call?
- 24 A. Well, this one is a revision. I'm not getting the
- 25 question.

864ZKAR4 Snowden - cross

1 THE COURT: Neither of these are revisions --

- THE WITNESS: These are the original documents, okay.
- 3 THE COURT: 2000.
- 4 THE WITNESS: Right.
- 5 THE COURT: One in January and one in, apparently,
- 6 April 2002.
- 7 THE WITNESS: So there -- I don't see a revision here,
- 8 that it was ever revised.
- 9 Q. As a matter of fact, the next quarter, which is
- 10 government's exhibit 42 --
- 11 A. Uh-huh.
- 12 THE COURT: It isn't a matter of being revised. Ms.
- 13 Snowden, the first quarter is a different number --
- 14 THE WITNESS: Right.
- 15 THE COURT: -- in this report than is the one in the
- 16 second report.
- 17 THE WITNESS: Exactly.
- 18 THE COURT: Now, as I understood you, you testified
- 19 that after you received the second report, you called and told
- 20 them there was an error in the first report, the first report
- 21 number and the second report number for the first --
- 22 THE WITNESS: Yes.
- 23 THE COURT: -- period were incorrect.
- 24 THE WITNESS: Uh-huh.
- THE COURT: Did you make that call?

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 THE WITNESS: I made that call, and there is an
- original grant file here, I'm sure that the original grant file
- 3 will reflect that.
- 4 Q. Well, when you got the next report, the third quarter, June
- 5 30th, 2002, they carried forward the number from the mistaken
- 6 second quarter report?
- 7 A. Uh-huh.
- 8 THE COURT: You're asking her to look at what?
- 9 Q. To look at exhibit 42, government exhibit 42.
- 10 A. They actual carried over to 17,792.26.
- 11 Q. Which was the mistaken number from the second report?
- 12 A. Yes. And if you look at the bottom of the form, this form
- 13 wasn't even signed by him. It wasn't -- it wasn't authorized,
- 14 it wasn't signed.
- 15 Q. But it was submitted, right?
- 16 A. It was -- of course, yes, it was submitted.
- 17 Q. And the numbers, according to you, were wrong because they
- 18 used the numbers from the second quarter, not from the first
- 19 quarter, the 12,000 number?
- 20 A. Yes.
- Q. Right? Did you make another call after you got the third
- 22 quarter financial statement?
- 23 A. Yes.
- Q. And who did you speak to then?
- 25 A. Probably Lee Gurfein or Dr. Karron. I don't recall who I SOUTHERN DISTRICT REPORTERS, P.C.

- 1 talked to.
- Q. And you say you made a note, you wrote something down in a
- 3 file about it?
- 4 A. Yes.
- 5 Q. How many calls did you make?
- 6 A. Quite a few.
- 7 Q. After you got the second financial statement, I'm sorry.
- 8 After you got the third financial statement, and you had not
- 9 received a revision of the second financial statement yet,
- 10 correct?
- 11 A. Yes.
- 12 Q. How many calls did you make about that?
- 13 A. I made calls until it was corrected, and that is reflected
- in the original grant file.
- 15 Q. When was it corrected?
- 16 A. I have no idea, because the forms are not in front of me.
- 17 Q. Well, in fact, the first time you ever got a revised
- 18 financial status report is reflected in the exhibits A to 40,
- 19 41, 42, 43, correct?
- 20 A. No, that's not correct.
- 21 Q. Aren't those the revision reports?
- 22 A. These are, these are revised reports, but these are not the
- 23 first revised reports.
- Q. Where is the first revised report?
- 25 A. In the original grant file.

1 Q. You never turned it over to the Prosecutor?

- 2 A. Yes.
- 3 Q. So you're telling us there are additional reports than what
- 4 we have here as exhibits, within exhibit 40 through 43?
- 5 A. I'm telling you that there are correspondence, additional
- 6 correspondence to these exhibits.
- 7 Q. Isn't it a fact, ma'am, that the first revised reports you
- 8 got for any quarter of the first year of the grant was on
- 9 August 13th, 2003?
- 10 A. No.
- 11 (Continued on next page)

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SOUTHERN DISTRICT REPORTERS, P.C.

- 1 BY MR. RUBINSTEIN:
- Q. Would you take a look at Exhibit 40A, please. Do you see
- 3 that exhibit that's in evidence, ma'am?
- 4 A. Yes.
- 5 Q. Do you see that is a revised financial status report?
- 6 A. Yes.
- 7 Q. And that is a report for the first period October 1, 2001
- 8 to December 31, 2001?
- 9 A. Yes.
- 10 Q. Signed by Dr. Karron?
- 11 A. Yes.
- 12 Q. Dated?
- 13 A. Oh, it's dated August 13, 2003.
- 14 Q. And in the next quarter take a look at 41A that's in
- 15 evidence, and that's for the second quarter ending March 31,
- 16 2002, correct?
- 17 A. Yes.
- 18 Q. And what date? Is that dated as date report submitted?
- 19 A. August 13, 2002. 2003, sorry.
- 20 Q. Same date as the first one, right?
- 21 A. Yes.
- Q. Now let's go to 42A. Is there a 42A?
- 23 A. Yes.
- Q. And 42 is the one, the original one that was submitted. It
- 25 was not signed by Dr. Karron. 42A is signed by Dr. Karron,

- 1 correct?
- 2 A. Yes.
- 3 O. And that covers the period of June 30, 2002 ending, right?
- 4 A. Yes.
- 5 Q. And that's signed by Dr. Karron?
- 6 A. Yes.
- 7 Q. And what date was that report submitted?
- 8 A. August 13, 2003.
- 9 Q. Same date, right?
- 10 A. Yes.
- 11 Q. And let's take a look at 43A, and that relates to the
- 12 fourth quarter September 30, 2002, signed by Dr. Karron,
- 13 correct?
- 14 A. Yes.
- 15 Q. And what date is that revised?
- 16 A. August 13, 2003.
- 17 Q. So, all four of these revised reports were submitted on the
- 18 very same day, correct?
- 19 A. Yes. They were signed on -- yes.
- 20 Q. As a matter of fact, that was the very same day that Bob
- 21 Benedict wrote you a letter that's Exhibit 48, that he cc'd to
- 22 Marilyn Goldstein, correct?
- THE COURT: Do you have 48?
- A. Yes, it's the same date.
- Q. By the way, did you ever review -- withdrawn.

8647KAR5 Snowden - cross

- 1 Is a grantee supposed to have a business manual?
- 2 A. Under regulation the grantee should have the proper written
- 3 management procedures within his company.
- 4 Q. Do you know whether or not CASI, Inc. had proper -- had any
- 5 sort of manual or business procedures?
- 6 A. According to a document that was sent to us by his
- 7 accounting firm that he hired, he did have a proper accounting
- 8 system within his corporation.
- 9 Q. And what about did he have a manual for fringe benefits?
- 10 A. Nothing that I reviewed. All I know is that we received a
- 11 document from an independent CPA saying that Dr. Karron's
- 12 company, CASI, had the proper management procedures to process
- 13 federal government funds.
- 14 Q. Did you ever ask Dr. Karron or any business administrator
- 15 for CASI whether or not they had a manual that encompassed
- 16 fringe benefits?
- 17 A. No.
- 18 Q. Now, did you have contact with Dr. Karron in July of 2003
- 19 after the grant was suspended?
- 20 A. Possibly.
- 21 O. Let me show you what has been marked for identification as
- 22 Defendant's D and E.
- 23 THE COURT: Can I have the designation again? B and
- 24 C?
- MR. RUBINSTEIN: D and E.

SOUTHERN DISTRICT REPORTERS, P.C.

	8647KAR5			Snowden - cross
1		MR.	KWOK:	May we approach, your Honor?
2		THE	COURT:	Have you looked at both documents?
3		MR.	KWOK:	Yes.
4		THE	COURT:	All right.
5		(Co	ntinued	on next page)
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- 1 (At the sidebar)
- 2 MR. EVERDELL: Your Honor, this e-mail, she is not
- 3 even on this e-mail, not on either one of these e-mails. Hope
- 4 Snowden is not on either of these two e-mails at all, so I
- 5 don't see how it's possible he could introduce it through her.
- 6 Secondly, this e-mail here and actually that e-mail
- 7 there is outside the indictment period. This ends June 2003.
- 8 These are e-mails July 24, 2003.
- 9 MR. RUBINSTEIN: Judge, we have the letter from
- 10 Ms. Goldstein in the 3500 that I showed before that's dated
- July I think 24th or 25th. I'll get it.
- 12 This is a letter July 25 from Ms. Goldstein, that she
- 13 has identified that she is aware of and she has seen. That's
- 14 her boss. These e-mails relate to what was going on at that
- 15 time.
- 16 THE COURT: But this doesn't look like the original
- 17 document.
- MR. RUBINSTEIN: No, it's a copy of the e-mail.
- 19 THE COURT: But it doesn't look like an original copy
- or a photostat or anything of that sort.
- 21 MR. RUBINSTEIN: No, we took it off what the
- 22 government has provided -- what we have, sorry. This is off
- 23 e-mails that we had on the computer that we had retrieved from
- the computers.
- 25 THE COURT: But it doesn't look like a retrieved

SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR5 Snowden - cross

1 e-mail. It's in different print, etc. I mean it just doesn't

- 2 look like any --
- 3 MR. RUBINSTEIN: She can say whether or not this is --
- 4 THE COURT: If you have the original, why not use the
- 5 original?
- 6 MR. RUBINSTEIN: I don't have the original. That's
- 7 why I'm showing this one.
- 8 THE COURT: I thought I saw it in the 3500 material,
- 9 something about cheers.
- 10 MR. RUBINSTEIN: It might be in there, but -- let me
- 11 take a look at the 3500 material.
- 12 THE COURT: What's the matter with the other letter
- 13 from Benedict?
- MR. EVERDELL: Well, first of all, it's from Bob
- 15 Benedict to Dr. Karron, and that's a hearsay problem.
- 16 Secondly, this is outside the scope. This is July 24,
- 17 2003. The indictment only alleges up to June 2003. How is
- 18 this relevant?
- 19 MR. RUBINSTEIN: It's relevant on the issue of intent,
- 20 your Honor. It's also relevant in the -- I saw those e-mails
- 21 myself, Judge, but I couldn't remember where it was, so I
- 22 printed out new ones. I don't know what I did with the
- 23 original e-mails, so I had them printed off the computer that
- it was saved.
- MR. KWOK: If I may, I just don't see how it goes to SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR5 Snowden - cross

- 1 the issue of intent for something that's happening after the
- 2 end of the indictment that's being charged.
- 3 THE COURT: Which one?
- 4 MR. KWOK: All of these. It's like in July of 2003.
- 5 This is also July 2003, and so is this one.
- 6 The indictment charges it ends in June 2003. You
- 7 can't unring a bell. If he had the intent to steal, the fact
- 8 that he later wanted to correct it after he knows that he is in
- 9 trouble does not undo that intent.
- MR. RUBINSTEIN: Well, he doesn't know; he just knows
- 11 the grant is suspended.
- 12 THE COURT: I don't think you can get it in through
- 13 this witness.
- MR. RUBINSTEIN: Then I will just ask about this
- 15 reference over here in the document that she has identified
- 16 where they talk about --
- 17 MR. KWOK: But it's still not in evidence. You can't
- 18 read it.
- 19 MR. RUBINSTEIN: No, I can ask her. She has
- 20 identified this.
- MR. KWOK: We will object if you ask her.
- 22 THE COURT: If you all talk at the same time, I can't
- 23 concentrate on what you're saying.
- 24 Well, I don't know the witness has seen this.
- MR. RUBINSTEIN: I did. I showed it to her, and she SOUTHERN DISTRICT REPORTERS, P.C.

	8647KAR5 Snowden - cross
1	has identified this, and she recognized it.
2	THE COURT: Any objection to 3504-M?
3	MR. EVERDELL: Are you trying to introduce it into
4	evidence?
5	THE COURT: Yes, he is.
6	MR. EVERDELL: That's not what I understood.
7	MR. KWOK: I think it's fine. No objection to that
8	THE COURT: All right.
9	(Continued on next page)
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SOUTHERN DISTRICT REPORTERS, P.C.

25

- 1 (In open court)
- 2 MR. RUBINSTEIN: Your Honor, I would at this time like
- 3 to offer what has been previously marked as Government Exhibit
- 4 3504-M --
- 5 THE COURT: For --
- 6 MR. RUBINSTEIN: -- for identification, as Defendant's
- 7 Exhibit F in evidence.
- 8 THE COURT: All right.
- 9 MR. EVERDELL: No objection.
- 10 THE COURT: It's a letter from Ms. Goldstein?
- 11 MR. RUBINSTEIN: That is correct, your Honor.
- 12 THE COURT: Dated July what?
- MR. RUBINSTEIN: Dated July 25, '03.
- 14 THE COURT: That's after the grant was suspended?
- MR. RUBINSTEIN: Right.
- 16 (Defendant's Exhibit F received in evidence)
- 17 THE COURT: Do you want to display it to the jury?
- 18 MR. RUBINSTEIN: Yes. I will read the document to the
- 19 jury. It's from the United States Department of Commerce,
- 20 National Institute of Standards and Technology, Gaithersburg,
- 21 Maryland, July 25, 2003, Dr. D.B. Karron, Computer Aided
- 22 Surgery, Inc., 300 East 33rd Street, Suite 4N, New York, New
- 23 York 10016. Re cooperative agreement number 70NANB1H3050.
- "Dear Dr. Karron. In response to your e-mail dated
- July 16, 2003, the money in your bank account does not

SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR5 Snowden - cross

1 constitute cost share. To qualify as cost share you would have

- 2 to actually apply your contribution to the project cost. In
- 3 order to resolve amendment 6, noncompliance of the special
- 4 award commission 7, cost share, you need to refund to the
- 5 government your applicable portion of the project cost and
- 6 resubmit corrected 269 reflecting that contribution.
- 7 "In reference to your proposed in kind contribution,
- 8 you cannot claim the full cost of preowned equipment.
- 9 According to the cost principles, you can only claim fair use
- 10 allowance (with rentals).
- 11 "If you need additional information, please contact
- 12 Hope Snowden at 301-975-602 or via e-mail at
- 13 Hope.snowden@NIST.gov. Sincerely, Marilyn Goldstein, grant
- 14 officer."
- 15 Ms. Snowden, after July 25, 2003 did Dr. Karron
- 16 contact you?
- 17 A. I don't recall.
- 18 Q. Did you contact Dr. Karron?
- 19 A. No.
- 20 MR. RUBINSTEIN: No further questions, your Honor.
- 21 THE COURT: All right. Thank you very much.
- 22 Redirect?
- MR. EVERDELL: Yes, please, your Honor.
- 24 THE COURT: Let's make it short.

25

8647KAR5 Snowden - cross

- 1 REDIRECT EXAMINATION
- 2 BY MR. EVERDELL:
- 3 Q. Hello again, Ms. Snowden.
- 4 A. Hello.
- 5 Q. You were asked several questions on cross-examination, and
- 6 I want to discuss a few of them.
- 7 If we could put up Government Exhibit 4, page 7.
- 8 Do you recall being asked about that slide?
- 9 A. Yes.
- 10 Q. And you recall being asked about bankruptcy in that slide?
- 11 A. Yes.
- 12 Q. What's the word after "bankruptcy" on that slide?
- 13 A. "Protection".
- 14 Q. So bankruptcy protection. What exactly are you referring
- 15 to when you have "bankruptcy protection" on that slide?
- 16 A. Bankruptcy protection is a reorganization. A company
- 17 reorganizes so that they don't want to totally -- the company
- is not totally going to go away, they are going to reorganize
- 19 so they can pay their financial debt.
- 20 Q. And is that something you have to notify the grant
- 21 specialist of?
- 22 A. Yes.
- Q. So, it's not if you are broke, is it?
- 24 A. No, it's not if you are broke; it's when you reorganize
- 25 financially.

8647KAR5

Snowden - redirect

- 1 Q. You were also asked some questions about revising budgets.
- 2 A. Yes.
- 3 O. There are a few there I want to touch on. First, you said
- 4 that I believe you can revise your budget at the end of the
- 5 first year, is that right?
- 6 A. Yes.
- 7 Q. But if your year one has already ended, can you revise your
- 8 year one numbers at that point?
- 9 A. No.
- 10 Q. So, what can you revise at the end of the first year of
- 11 your budget?
- 12 A. If your year one has ended, you can revise your out years,
- which would be years two and three.
- 14 Q. And you were also asked I believe about revising budgets,
- 15 specifically the ten percent rule which is on that slide. Is
- 16 that right?
- 17 A. Yes.
- 18 Q. And you testified about what that 10 percent rule means,
- 19 right?
- 20 A. Yes.
- 21 Q. And is that 10 percent of the total award amount or 10
- 22 percent of the annual budget that you're allowing?
- 23 A. It's 10 percent of the annual budget.
- 24 Q. So, if you are allowed \$800,000 in the first year of your
- grant, how much can you move around in the first year of your SOUTHERN DISTRICT REPORTERS, P.C.

8647KAR5 Snowden - redirect

- 1 grant without getting prior approval?
- 2 A. \$79,999.99, under \$80,000.
- 3 Q. And can those revisions be additions and subtractions?
- 4 A. The 80,000 includes additions and subtractions.
- 5 Q. And does the total have to be 80,000 under that example?
- 6 A. Yes.
- 7 Q. Now, when you revise your budget though can you create
- 8 brand new categories without approval?
- 9 A. No.
- 10 Q. You need prior approval for that?
- 11 A. Yes.
- 12 Q. OK. Do you recall being asked about Bob Benedict?
- 13 A. Yes.
- Q. Do you recall who Bob Benedict is?
- 15 A. There was a letter from Dr. Karron saying that he was going
- 16 to be the new administrator under CASI.
- 17 Q. And do you recall when that letter was sent?
- 18 A. I think it was like September 2003.
- 19 Q. Are you certain of that?
- 20 A. No.
- 21 Q. Do you need something to refresh your recollection?
- 22 A. Please.
- 23 THE COURT: Has Mr. Rubinstein seen the document that
- you are showing the witness?
- 25 MR. EVERDELL: Sorry. Mr. Rubinstein, this is --

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1 THE COURT: Show him what you are going to show the

- 2 witness.
- 3 MR. EVERDELL: It's 3504-L.
- 4 MR. RUBINSTEIN: I have a copy of it.
- 5 THE COURT: OK.
- 6 A. Oh, it's February 25, 2003.
- 7 Q. So, say again the date of when Dr. Karron requested Bob
- 8 Benedict be made the --
- 9 A. February 25, 2003.
- 10 Q. Now, I believe you testified on direct that you didn't
- 11 approve Mr. Benedict, is that right?
- 12 A. No, I did not.
- 13 Q. And what was the reason why he was not approved?
- 14 A. He was not approved because the budget had fluctuated so
- many times none of the budgets were approved.
- 16 He was incorporated into the budget as a proposed
- 17 revision, and since they weren't approved, he was never
- 18 approved, so he was never authorized to make any decisions
- 19 under the ATP grant.
- 20 Q. And do you recall when the last proposed budget revision
- 21 was submitted?
- 22 A. In 2003. The last one I think was like February 2003.
- 23 Q. If you refer to Government Exhibit 36. Do you have that in
- 24 front of you?
- 25 A. Yes.

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- 1 Q. Is that the last proposed budget revision?
- 2 A. To my recollection, this is the last proposed budget.
- 3 Q. And what's the date on the last proposed budget revision?
- 4 A. February 25, 2003.
- 5 Q. Is that the same date as the letter requesting Mr. Benedict
- 6 be appointed as the administrator at CASI?
- 7 A. Yes.
- 8 Q. And was this amendment ever approved?
- 9 A. No, it never was.
- 10 Q. Are you still able to have discussions with an unapproved
- 11 contact person like that?
- 12 A. If they're unapproved I can have discussions with him, but
- 13 nothing he says can be validated because you're not an approved
- 14 personnel. So, I can talk to them verbally, but until you are
- incorporated into the budget, in the approved budget, it's not
- 16 authentic, so you can't make any decisions under the ATP
- 17 project.
- 18 Q. Now, in terms of hiring decisions in general, which I
- 19 believe you were asked about, does the grants office, your
- 20 office, review hiring decisions of the companies that receive
- 21 ATP grants?
- 22 A. No, the companies, they're commercial companies, they can
- 23 hire and fire whoever they want, but anybody that participates
- on the ATP grant, we have to -- the grant officer has to
- 25 approve. But otherwise just normal business day, they can hire SOUTHERN DISTRICT REPORTERS, P.C.

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- and fire whoever they want; we have nothing to do with that.
- Q. So, you don't review résumés necessarily of people that are
- 3 hired by companies?
- 4 A. No.
- 5 Q. All right. You were asked a series of questions about the
- 6 budget amendments and the \$80,000 10 percent cap in this case.
- 7 Do you remember that?
- 8 A. Yes.
- 9 Q. I just want to go through that very quickly if possible,
- 10 but I think we should go through that.
- 11 If we could have Government's 14 on the screen.
- Do you see that document?
- 13 A. Yes.
- 14 O. I believe you testified before that this was the last
- 15 approved budget, is that right?
- 16 A. No, 14, this is the original budget.
- 17 Q. Sorry, you're right, that's the original budget.
- 18 A. This is the original budget.
- 19 Q. OK. And then if you look at amendment 2, which is
- 20 Government Exhibit 22, the third page of that exhibit. We
- 21 discussed this on direct, is that right?
- 22 A. Yes.
- 23 Q. And that is I believe the only amendment that was approved
- 24 to the actual budget numbers, is that right?
- 25 A. This is the only approved revised budget.

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- 1 Q. What was the date on that budget?
- 2 A. This budget was dated 12/27/01.
- 3 Q. Now, you testified on cross-examination and on direct about
- 4 conversations you had with Dr. Karron about equipment costs,
- 5 right, an additional piece of equipment?
- 6 A. About adding additional equipment to the program, yes.
- 7 Q. And I believe that you testified that you needed him to
- 8 submit a budget amendment request because it was over \$80,000,
- 9 is that right?
- 10 A. Yes.
- 11 Q. OK. I just want to compare -- this is the final approved
- 12 budget, is that right, the last approved budget amendment?
- 13 A. Yes.
- 14 Q. Then let's compare that to Government Exhibit 32.
- 15 THE COURT: Well, we are looking at Government Exhibit
- 16 22.
- 17 MR. EVERDELL: Government Exhibit 22 is on the screen.
- 18 I don't know if it's possible to do a side-by-side comparison.
- 19 Yes? On the left-hand side Government Exhibit 22.
- 20 THE COURT: No one can see these. No one can see
- 21 them. I'm closer than they are, and I can't see them.
- 22 MR. EVERDELL: Then we will just discuss it.
- 23 THE COURT: You have to go to the exhibit numbers.
- MR. EVERDELL: Absolutely, your Honor.
- Q. We just looked at Government Exhibit 22, which was SOUTHERN DISTRICT REPORTERS, P.C.

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- amendment to the final revised budget that was approved, right?
- 2 A. Yes.
- 3 Q. Do you see the equipment costs there?
- 4 A. Yes.
- 5 Q. For year one.
- 6 A. Yes.
- 7 Q. What is the number there?
- 8 A. \$110,000.
- 9 Q. OK. And then you're now looking at Government's 32, which
- 10 I believe you were looking at on cross-examination.
- 11 A. Yes.
- 12 Q. Is this a proposed budget or was this approved?
- 13 A. Proposed.
- 14 Q. So this is proposed. Will you look at the equipment line
- 15 there.
- 16 A. Yes.
- 17 Q. For year one?
- 18 A. Yes.
- 19 O. What's the number there?
- 20 A. \$303,400.
- Q. And is that more than \$80,000 more than the last approved
- 22 budget for that equipment line in year one?
- 23 A. Yes.
- 24 THE COURT: I'm sorry. I've got the wrong exhibit.
- 25 Just a second. All right. Go ahead.

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Snowden - redirect

- 1 Q. So, then looking at 32, which is a proposed budget, I think
- 2 you testified, right --
- 3 A. Yes.
- 4 Q. -- the equipment line there says -- and now it's on the
- 5 screen -- \$303,400, right?
- 6 A. Yes.
- 7 Q. Whereas before you said the last approved budget the
- 8 equipment line for year one was \$110,000, isn't that right?
- 9 A. Yes.
- 10 Q. So, that is an increase of just below \$200,000, isn't it?
- 11 A. Yes.
- 12 Q. All right. So, is that more than \$80,000?
- 13 A. Yes, it is.
- 14 Q. The 10 percent limit?
- 15 A. Yes.
- 16 Q. And is that why you had discussions with Dr. Karron about
- 17 submitting a revised budget amendment?
- 18 A. Yes.
- 19 Q. And let's go to Government Exhibit 35, page 7.
- 20 Do you have that in front of you?
- 21 A. Yes, I do.
- 22 Q. Do you recall being asked questions on cross-examination
- about this equipment category?
- 24 A. Yes.
- Q. OK. Now, would equipment costs -- well, let me read the SOUTHERN DISTRICT REPORTERS, P.C.

- 1 last sentence, the last two sentences here. It says, "ATP
- funds may not be used for construction of new buildings or
- 3 extensive renovations of existing laboratory buildings. ATP
- 4 funds may, however, be used for construction of experimental
- 5 research and development facilities to be located within a new
- 6 or existing building provided that the equipment or facilities
- 7 are essential for carrying out that project. If such costs are
- 8 proposed, include below and provide justification."
- 9 That's what it says, right?
- 10 A. Yes.
- 11 Q. Now that last sentence, 'if such costs are proposed,
- include below and provide justification," why is that sentence
- 13 there?
- 14 A. "If such costs are proposed, include below and provide
- 15 justification, "because it may -- it could be considered. But
- 16 that's a consideration. But there was none incorporated into
- 17 this proposal. There was no costs.
- 18 Q. Do construction costs, things like that, have to be
- 19 approved in the budget before you can spend money on them?
- 20 A. Yes.
- 21 Q. OK.
- 22 THE COURT: Well, what is the item that appears at the
- 23 end of that exhibit -- or not the end -- a few pages later,
- total down below is \$231,719 at the bottom of the page? Now,
- as I see it, there is a document at the end that says item

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1 methodology, computation and costs, three pages later is it,

- 2 counsel? And there it says video system, work station,
- 3 servers, printer, fire wall, lab camera, scanners, tape drive,
- 4 library, switches, air conditioning and software.
- 5 Have you got that?
- 6 THE WITNESS: Yes.
- 7 THE COURT: Well, that totals up to \$231,719 at the
- 8 bottom?
- 9 THE WITNESS: Um-hum.
- 10 THE COURT: What's the problem?
- 11 Q. The question is: Were these costs ever approved?
- 12 A. No, they were never approved.
- 13 Q. And if you take a look at Government Exhibit 1, page 6.
- 14 First, looking at Government Exhibit 1 when you get it, just
- 15 tell us what that is.
- 16 THE COURT: You say they were never approved, but that
- isn't quite what I was asking you. This is for equipment, but
- 18 this is not for -- none of those funds were, as I read it, are
- 19 for construction of new buildings or extensive renovations,
- other than possibly the air conditioning and switches. Am I
- 21 wrong, counsel?
- 22 MR. EVERDELL: Your Honor, the category was listed as
- 23 equipment in subcategory D, and you are right that that number
- is fully elaborated, itemized later on in the exhibit, and it
- does add up, so these are the costs that are being claimed

- 1 under equipment.
- THE COURT: It doesn't include installation.
- 3 MR. EVERDELL: That's correct. It includes -- this
- 4 talks about using these funds for construction of new buildings
- 5 and extensive renovation of existing laboratories, and that's
- 6 where these costs -- according to that language we read out,
- 7 these costs are contemplated for that purpose.
- 8 THE COURT: Well, what about construction on
- 9 experimental research and development facilities to be located
- 10 in existing buildings, not new, provided that the equipment and
- 11 facilities are essential for carrying out the project?
- 12 MR. EVERDELL: Correct. I think my question was were
- these funds in fact ever approved.
- 14 THE WITNESS: No, they weren't. They were requested
- and proposed but never approved.
- 16 Q. And if you could look at --
- 17 THE COURT: The issue is whether or not they properly
- 18 come within that framework of Exhibit D; it's just that they
- 19 were not approved. Is that right?
- 20 MR. EVERDELL: Correct, your Honor.
- 21 THE COURT: That's what I want to find out.
- MR. EVERDELL: Sorry.
- THE COURT: Sure.
- Q. And what is Exhibit 1 again?
- 25 A. Exhibit 1 is the Advanced Technology Program proposal SOUTHERN DISTRICT REPORTERS, P.C.

- 1 preparation kit.
- Q. Was that given to the defendant as part of his proposal
- 3 when he submitted it for an ATP grant?
- 4 A. Yes. I don't know -- he probably went to a proposer's
- 5 conference, and anybody that wants to propose a grant, this is
- 6 a package that gives you an outline, gives you direction and
- 7 guidance on how to complete a proposal to submit to ATP. So,
- 8 he picked it up, he got it from somewhere.
- 9 Q. OK. And then if we could highlight 5A, and I will just
- 10 read it. "What types of costs are unallowable." Right?
- 11 And then 5A says "Regardless of whether they are allow
- 12 under the federal cost principles, the following are
- 13 unallowable under ATP: Construction of new buildings or
- 14 extensive renovation of existing laboratory buildings.
- 15 However, construction of experimental research and development
- 16 facilities to be located within a new or existing building are
- 17 allowable provided that the equipment or facilities are
- 18 essential for carrying out the proposed scientific and
- 19 technical project and are approved by the NIST grants officer."
- Is that what that says?
- 21 A. Yes.
- 22 Q. Are you the NIST grants officer for the ATP grant for CASI?
- 23 A. No.
- Q. Is that your supervisor?
- 25 A. That's my supervisor. I'm the grant specialist.

- 1 Q. And you work in the grants office.
- 2 A. Yes.
- 3 THE COURT: Who is your supervisor?
- 4 THE WITNESS: Formerly, when this was going on her
- 5 name is Marilyn Goldstein. Right now her name is Melinda
- 6 Tukram.
- 7 Q. Is Marilyn Goldstein the actual grants officer, the one who
- 8 would sign off on the actual amendments that were approved?
- 9 A. Yes.
- 10 Q. OK. You were also asked on cross-examination about sunk
- 11 costs, costs incurred before the grant was actually awarded.
- 12 A. Yes.
- 13 Q. What is the rule on that again?
- 14 A. We don't pay for preaward costs.
- 15 Q. If you can go to Government Exhibit 13 and highlight
- 16 funding limitations number 6.
- 17 Do you know what this document is, Ms. Snowden?
- 18 A. Yes.
- 19 O. What's this?
- 20 A. These are the special award conditions that are attached to
- 21 the grant.
- 22 Q. And was this attached to the CASI's ATP grant?
- 23 A. Yes, it was.
- 24 Q. I will just read the funding limitations. "The scope of
- work and budget incorporated into this award cover the three

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1 year period (referred to as the project period) for a total

- 2 amount of \$2 million in federal funds. However, federal
- 3 funding available at this time is limited to \$800,000 for the
- 4 first year period from October 1, 2001 through September 30,
- 5 2002, referred to as the budget period."
- 6 Do you see that?
- 7 A. Yes.
- 8 Q. So, what does that mean that the \$800,000 are available for
- 9 that period October 1, 2003 through September 2 -- 30, 2002?
- 10 A. That's the period that these funds can be expended so they
- 11 can be spent within starting October 1, 2001 through September
- 12 30, 2002.
- 13 Q. So, if you wanted to expend these ATP funds for a cost that
- occurred before that period, could you do it?
- 15 A. No.
- 16 Q. And was this special conditions award document given to the
- 17 defendant as part of his grant proposal when he received the
- 18 grant?
- 19 A. Yes.
- 20 THE COURT: Any further questions?
- MR. EVERDELL: Sorry?
- 22 THE COURT: Do you have anything further with this
- 23 witness?
- MR. EVERDELL: Your Honor, I do have to cover just a
- 25 few more topics.

- 1 THE COURT: Let's move along.
- Q. All right. Ms. Snowden you were asked a question about the
- 3 audits on cross-examination. I believe you said that you told
- 4 the defendant that you paid for the audit and you wanted it.
- 5 A. Yes.
- 6 Q. What prompted you to say that?
- 7 A. The audit was very delinquent and past due. We needed --
- 8 the audit was due, it was delinquent, and therefore I requested
- 9 a copy of the audit.
- 10 Q. OK.
- MR. EVERDELL: Almost done, your Honor.
- 12 Q. You were also questioned about the financial status reports
- 13 and the revisions to the financial status reports.
- 14 A. Yes.
- 15 Q. And I believe you testified on cross-examination that there
- 16 were other revisions that you had put in the grant file.
- 17 A. Yes.
- 18 Q. And in fact the first revisions were not on August 13,
- 19 2003, there were other revisions that you recalled?
- 20 A. Quite a few in the middle of that date.
- 21 MR. EVERDELL: Your Honor, I haven't marked these yet,
- 22 but I would like to mark them for identification. I would like
- 23 to mark these for identification as Government Exhibit 2000 and
- 24 2001.
- 25 O. Do you see those documents?

- 1 A. Yes.
- Q. Do you recognize those documents?
- 3 A. Yes.
- 4 Q. How do you recognize them?
- 5 A. They were sent to me by Dr. Karron.
- 6 Q. And what are those documents?
- 7 A. These are financial status reports.
- 8 MR. EVERDELL: The government moves 2000 and 2001 be
- 9 admitted into evidence.
- 10 THE COURT: May I see them? No objection, Exhibit
- 11 2000 and 2001 are admitted into evidence.
- MR. EVERDELL: Your Honor, may I publish?
- THE COURT: Yes, you may.
- 14 (Government's Exhibits 2000 and 2001 received in
- 15 evidence)
- 16 THE COURT: Blow it up so they can read it.
- 17 Q. All right. Ms. Snowden, you testified that this is a
- 18 revised financial report you received from Dr. Karron?
- 19 A. Yes.
- 20 Q. And what period does that revised financial report supposed
- 21 to cover?
- 22 A. October 1, 2001 through March 31, 2002.
- 23 Q. Do you see the date on the bottom of that revision?
- 24 A. Yes.
- 25 Q. What is the date on the very bottom of that revision?

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- 1 A. April 21, 2002.
- Q. Who signed that?
- 3 A. Dr. Karron.
- 4 Q. And do you see the scratch-outs on total outlays up top?
- 5 A. Yes.
- 6 Q. What are those?
- 7 A. Those are mathematical errors that I noticed.
- 8 THE COURT: Are they.
- 9 THE WITNESS: Yes, that's my handwriting.
- 10 Q. And what are those revisions based on?
- 11 A. The previous report that was sent. Now because it says
- 12 previously reported, the numbers are wrong, so I have -- I did
- 13 the math, scratched them out and then called Dr. Karron for him
- 14 to revise them again.
- 15 Q. And was this revised support submitted by Dr. Karron?
- 16 A. Yes.
- 17 Q. I show you Government Exhibit 2001.
- 18 MR. RUBINSTEIN: Can I have 2000, please?
- 19 Q. Do you see that document?
- 20 A. Yes.
- 21 Q. What period is this supposed to cover?
- 22 A. April 1, 2002 --
- 23 MR. RUBINSTEIN: Judge, I'm going to object and ask
- 24 for a sidebar. These documents have never been given to me
- 25 before.

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1 THE COURT: Well, you should have raised that before

- we admitted them in evidence, Mr. Rubinstein.
- 3 MR. RUBINSTEIN: I'm sorry, Judge. They should have
- 4 given me a copy, Judge. I am sorry. I was trying to get
- 5 something else. It's my fault.
- 6 THE COURT: I'm sorry, but this is not a proper way to
- 7 raise it. I will go over and hear you at the sidebar, but it's
- 8 a little late.
- 9 MR. RUBINSTEIN: You're right.
- 10 (Continued on next page)

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8647KAR5 Snowden - redirect (At the sidebar) MR. RUBINSTEIN: I apologize, Judge, but I didn't think that the government was going to offer something that they never turned over, that's clearly 3500 material. MR. KWOK: Well --MR. RUBINSTEIN: And to introduce it is inappropriate. OK? And they violated Rule 3500, and your Honor should strike these documents from the record. THE COURT: I will take it under advisement and hear you after the end of the court day. (Continued on next page)

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- 1 (In open court)
- 2 BY MR. EVERDELL:
- 3 Q. Just looking again at Government Exhibit 2001.
- 4 A. Yes.
- 5 Q. What period is that supposed to cover?
- 6 A. That's April 1, 2002 through June 30, 2002.
- 7 Q. Is that a revised financial report?
- 8 A. Yes, it is.
- 9 Q. And what's the date on that revised financial report?
- 10 A. July 2002.
- 11 Q. Do you know who submitted this to you? I know the
- 12 signature is obscured.
- 13 A. Dr. Karron. He was the only authorized official signer of
- 14 these documents.
- 15 Q. What is that note "review all 269, 7/19/02"?
- 16 A. Because there were so many revisions in between the
- 17 original and the final that was given to me -- the original --
- 18 there was a lot of revisions in between, so I would call him
- 19 all the time, these numbers are wrong, you need to review,
- 20 revise, correct and resend.
- So, I was making notes to myself, and the note was
- 22 check them all, because there are too many fluctuating numbers
- in here; you can't keep making so many mathematical mistakes;
- there is too many mistakes in here.
- Q. Did you in fact have conversations with Dr. Karron about SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 that?
- 2 A. Yes.
- THE COURT: And that note is 7/19/02.
- 4 THE WITNESS: Yes.
- 5 MR. EVERDELL: Your Honor, no further questions for
- 6 this witness.
- 7 MR. RUBINSTEIN: Just one, your Honor.
- 8 RECROSS EXAMINATION
- 9 BY MR. RUBINSTEIN:
- 10 Q. Could we have Exhibit 10B, the page that starts with D,
- 11 equipment.
- DEPUTY COURT CLERK: What pages?
- 13 MR. RUBINSTEIN: I will put it on the Elmo.
- 14 DEPUTY COURT CLERK: Is there a number on it?
- MR. RUBINSTEIN: It's 10B.
- 16 THE COURT: It's about four pages into 10B.
- 17 MR. RUBINSTEIN: Thank you, Judge. Maybe we can put
- 18 it on the Elmo.
- 19 THE COURT: It's been up there a few times.
- 20 MR. RUBINSTEIN: Is this page in the binders? OK.
- 21 Q. Now, the government showed you on redirect a portion from
- 22 an exhibit that provided that prior approval was required for
- 23 construction related to the research and development, correct?
- 24 Do you remember just being shown something on the screen
- 25 before?

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- 1 A. Yes.
- Q. Now, in 10B, Exhibit 10B, it's a fact that it states "If
- 3 such costs are proposed, include below and provide
- 4 justification." Correct?
- 5 A. Yes.
- 6 Q. There is nothing in 10B that suggests that you need prior
- 7 approval, correct?
- 8 A. Correct.
- 9 MR. RUBINSTEIN: No further questions, Judge.
- 10 THE COURT: Do you want to reopen?
- MR. EVERDELL: No.
- 12 THE COURT: All done? You are excused.
- 13 (Witness excused)
- 14 THE COURT: Next witness.
- 15 MR. KWOK: Before I call the next witness, the
- 16 government wants to read a proposed stipulation into the record
- 17 at this time.
- 18 THE COURT: All right. Read it.
- 19 Get the witness ready. Time is wasting.
- I should have said something to the jury.
- 21 During that last examination I asked quite a few
- 22 questions, and it's not my purpose to interfere with the
- 23 examination going on. I asked the questions for clarification
- 24 purposes when I think that the testimony isn't clear or and
- times in an attempt to speed things up. You are not to draw

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- 1 any conclusions from the fact that I asked questions of one
- 2 witness or another. I just have very much in mind the time
- 3 problems in the case, and I want to get the case over as soon
- 4 as possible. I think I'm helping, but I may not be helping,
- 5 and I try to anticipate questions I think the jury might have
- 6 so that things are clear for the jury. That's the purpose of
- 7 the questioning, but it's not that I'm taking sides with one
- 8 side or the other.
- 9 MR. RUBINSTEIN: Your Honor, while the government
- 10 reads the stipulation, which I have agreed to, can I run out
- 11 for a second so we don't stop anything?
- 12 THE COURT: Yes, you may. Thank you.
- MR. KWOK: May I proceed, your Honor?
- 14 THE COURT: Yes.
- 15 MR. KWOK: I am reading into the record what's been
- 16 marked for identification Government Exhibit 900, and it reads
- 17 as follows:
- 18 United States of America v. Daniel B. Karron, the
- 19 defendant, S2 07 Crim. 541. "It is hereby stipulated and
- 20 agreed by and among the United States of America, by Michael J.
- 21 Garcia, United States attorney for the Southern District of New
- 22 York, Steven Kwok and Christian Everdell, assistant United
- 23 States attorneys, of counsel, and defendant Daniel B. Karron by
- 24 and with the consent of his attorney Ronald Rubinstein, Esq.
- 25 that:

- 1 "1. The documents marked for identification as
- 2 Government Exhibit 80 are the records of the bank accounts of
- 3 Daniel B. Karron, defendant, at JP Morgan Chase Bank from in or
- 4 about October 2001 to in or about August of 2003.
- 5 "2. The documents marked for identification as
- 6 Government Exhibit 81 are the records of the bank accounts of
- 7 Computer Aided Surgery, Inc. (CASI) at JP Morgan Chase Bank
- 8 from in or about October 2001 to in or about August 2003.
- 9 "3. The documents marked for identification as
- 10 Government Exhibit 90 are the credit card statements for the
- 11 American Express card bearing account number 3783-490172-15000
- from in or about October 2001 to in or about April 2003.
- 13 "4. The documents marked for identification as
- 14 Government Exhibit 100 are the records of purchases at Data
- 15 Vision by CASI from in or about October 2001 to in or about
- 16 October 2003.
- 17 "5. The documents marked for identification as
- 18 Government Exhibit 101 are the records of purchases at Home
- 19 Front Hardware Store by CASI from in or about September 2002 to
- in or about September 2003.
- 21 "6. The documents marked for identification as
- 22 Government Exhibit 102 are the records of purchases at General
- 23 Computer and Service by CASI from in or about October 2001 to
- in or about May 2003.
- 25 "7. Documents marked for identification as Government SOUTHERN DISTRICT REPORTERS, P.C.

- 1 Exhibit 103 are the records of purchases at Silicon Graphics,
- 2 Inc. by CASI from in or about December 2001 to in or about
- 3 January 2003.
- 4 "8. The documents marked for identification as
- 5 Government Exhibit 104 are the records of purchases at Silicon
- 6 City, Inc. by CASI in or about November 2001 to in or about May
- 7 2003.
- 8 "9. The documents marked for identification as
- 9 Government Exhibit 120A are the records of purchases at Silicon
- 10 City, Inc. by CASI on or about May 10, 2002, March 27, 2002 and
- 11 October 1, 2002, with proof of purchase and payment, and the
- 12 records of purchase at Data Vision by CASI on or about
- 13 September 20, 2002.
- 14 "The records marked for identification as Government's
- 15 Exhibits 80, 81, 90, 100, 101, 102, 103, 104 and 120A are full
- 16 and complete records of the acts, transactions and events
- 17 described therein; were made and/or received and thereafter
- 18 maintained in the regular course of business; were made at or
- 19 near the time of the acts, transactions and events recorded
- 20 therein; and contain the information set forth by or obtained
- 21 from persons with knowledge of those matters.
- 22 "It is further stipulated and agreed that the
- 23 Government's Exhibits 80, 81, 90, 100, 101, 102, 103, 104 and
- 24 120A, and this stipulation, which is marked for identification
- 25 as Government Exhibit 900, may be received in evidence as

- 1 Government Exhibit in this trial, and it is signed June 3,
- 2 2008, New York, New York, on behalf of the United States by
- 3 Steve Kwok, and on behalf of Daniel B. Karron by Ronald
- 4 Rubinstein, Esquire."
- 5 Your Honor, the government moves for the admission of
- 6 this stipulation and the exhibits mentioned therein.
- 7 MR. RUBINSTEIN: No objection.
- 8 THE COURT: No objection? Let me have a copy of the
- 9 stipulation, please.
- 10 Government's Exhibits 80, 81, 90 and 100, and Exhibits
- 11 101, 102, 103, 104 and 104A are admitted in evidence pursuant
- 12 to stipulation to the parties.
- DEPUTY COURT CLERK: 104A or 120A?
- 14 THE COURT: I'm sorry. 104 and 120A. They are
- 15 admitted into evidence. Thank you.
- 16 (Government's Exhibits 80, 81, 90, 100, 101, 102, 103,
- 17 104, 120A received in evidence)
- 18 (Government's Exhibit 900 received in evidence)
- 19 MR. KWOK: The government calls Belinda Riley.
- 20 BELINDA RILEY,
- 21 called as a witness by the government,
- 22 having been duly sworn, testified as follows:

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- 24 DEPUTY COURT CLERK: Please state you name, and spell
- 25 you first and last name slowly for the record, please.

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- THE WITNESS: My name is Hazel Riley, H-A-Z-E-L
- 3 R-I-L-E-Y, but I go by Belinda.
- 4 DIRECT EXAMINATION
- 5 BY MR. KWOK:
- 6 Q. Good afternoon, Ms. Riley.
- 7 A. Good afternoon.
- 8 Q. Where do you work?
- 9 A. Department of Commerce, Office of Inspector General, the
- 10 Atlanta region.
- 11 Q. What's your job title?
- 12 A. Assistant regional inspector general for audits, Atlanta
- 13 region.
- 14 Q. Is that a supervisory position?
- 15 A. Yes, it is.
- 16 Q. How long have you been a supervisor?
- 17 A. For about two years.
- 18 Q. What do you do in your current job?
- 19 A. I supervise several employees, and I plan audits and other
- 20 duties assigned.
- 21 Q. What did you do before you became a supervisor?
- 22 A. I was an auditor reviewing government grants or government
- programs.
- Q. You were an auditor with which department?
- 25 A. The Department of Commerce, Office of Inspector General,

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- 1 since June of '97.
- 2 Q. What were your duties and responsibilities when you were an
- 3 auditor with the Department of Commerce?
- 4 A. To audit commerce programs, work up commerce grants, under
- 5 the various agencies.
- 6 Q. What did you do before then, before you joined the commerce
- 7 department?
- 8 A. I was a revenue agent with IRS for about 11 years.
- 9 Q. Can you give us a time frame if you remember?
- 10 A. I started in September of '86 and left in June of '97.
- 11 (Continued on next page)

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- 1 Q. And what did you do as an agent with the IRS?
- 2 A. For the first -- I audited individual tax returns,
- 3 corporate tax returns, excise tax returns.
- 4 Q. Ms. Riley, what's your educational background?
- 5 A. I have a bachelors of -- I have a B.A. in accounting, a
- 6 B.A. in accounting information systems, a Bachelor of Science
- 7 in Computer Science Programming Option, and I am a certified
- 8 CPA.
- 9 Q. How did you become a certified CPA, what --
- 10 A. Certified Public Accountant.
- 11 Q. What does CPA stand for?
- 12 A. Certified Public Accountant.
- 13 Q. How did you become certified?
- 14 A. I took a CPA exam at the time, I think it was a
- 15 two-and-a-half day test that's like 19 hours, and you also had
- 16 to have five years for government to become a CPA in
- 17 accounting.
- 18 Q. Miss Riley, what, if any, professional recognition have you
- 19 received for your accounting and auditing work?
- 20 A. I have two bronze medals and a silver medal awarded from
- 21 the Department of Commerce.
- 22 MR. KWOK: Your Honor, government offers Belinda Riley
- as an expert in accounting and auditing procedures.
- MR. RUBINSTEIN: No objection, your Honor.
- THE COURT: All right. Ms. Riley is accepted as an SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 expert in accounting auditing procedures -- accounting and
- 2 auditing procedures.
- 3 BY MR. KWOK:
- 4 Q. Ms. Riley, what kinds of grants does your office audit?
- 5 A. We audit NIST ATP grants, which is National Institute of
- 6 Standards and Technology Advanced Technology Program, audits
- 7 for research. We audit NTIA grants in telecommunications. We
- 8 audit EDA grants, which is Economic Development Administration,
- 9 whatever -- we can audit any grant that one of our commerce
- 10 agencies give.
- 11 Q. Do all grants awarded by the Commerce Department get
- 12 audited by the Office of the Inspector General?
- 13 A. No.
- 14 Q. How does your office become involved?
- 15 A. Our office becomes involved by request from NIST or it
- 16 could be from the hot line call that says that they suspect an
- 17 organization is using fraudulent, doing fraudulent activity.
- 18 Or we have a -- we review all of the NIST ATP research grant
- 19 awards submitted by the CPA firms, and so if during one of our
- 20 reviews someone sees suspicious, we may audit that award.
- 21 Q. How many audits have you handled since you joined the
- 22 department?
- 23 A. Probably about 10 or 15.
- 24 Q. How many times have you testified in a criminal trial
- 25 before in connection with your auditing work?

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Riley - direct

- 1 A. None.
- Q. Ms. Riley, did there come a time when you became involved
- 3 in auditing an Advanced Technology Program grant or ATP grant
- 4 awarded to a company known as CASI?
- 5 A. Yes.
- 6 Q. Who was the principal investigator of that grant?
- 7 A. Dan Karron.
- 8 Q. Do you see Dan Karron in the courtroom here today?
- 9 A. Yes, he's over there.
- 10 Q. Could you describe an article of clothing he's wearing?
- 11 A. He's got glasses -- he's got on glasses, a pony tail and is
- 12 that a white and green tie?
- 13 MR. KWOK: Your Honor, may the record reflect that the
- 14 witness has identified the defendant?
- 15 THE COURT: All right, the record will so reflect.
- 16 Q. Ms. Riley, how did you become involved in the CASI audit?
- 17 A. The NIST grants officers sent a letter to our -- the Office
- 18 of Inspector General requesting an audit, and I was assigned
- 19 the audit.
- Q. What did they ask you to do?
- 21 A. To determine the financial status of the grant project.
- Q. And when was this, approximately?
- 23 A. We received requests in May of 2003, approximately.
- Q. What did you do upon receiving this request?
- 25 A. I called CASI to schedule an initial appointment for the SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 audit.
- Q. Where did you go to conduct this audit?
- 3 A. To the CASI office apartment.
- 4 O. And where is that?
- 5 A. In Manhattan.
- 6 Q. You said apartment. How do you know it was an apartment?
- 7 A. Well, on some of the visits, Mr. Karron would be getting
- 8 out of bed to answer the door because I would get there early
- 9 in the morning, 10:00 o'clock, 9, 10:00 o'clock, and he was a
- 10 late night person.
- 11 Q. And what was the objective of your visit?
- 12 A. To determine the financial status of the grant cost.
- 13 Q. How do you get up to speed on the company's financial
- 14 situation?
- 15 A. Okay. Prior -- by reviewing the ledgers and invoices
- 16 provided by CASI to me. Prior to going to the -- prior to
- 17 coming to Manhattan, I interviewed the NIST grants office
- 18 people and reviewed their grant files concerning CASI.
- 19 Q. As part of that preparation, did you talk to anyone at
- 20 CASI?
- 21 A. Yes. At CASI I talked to Dan Karron, to Joan Hayes, the
- 22 CPA that he provided to, Frank Spring, a book keeper, to Bob
- 23 Benedict, the project manager.
- Q. And is that consistent with what you usually do?
- 25 A. Yes.

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Riley - direct

- 1 Q. Your usual practice?
- 2 A. Yes.
- 3 O. You mentioned invoices. Can you tell us how those invoices
- 4 related to what you do as an auditor?
- 5 A. Well, we trace -- we're provided journal entries or
- 6 whatever, we're provided a list of expense, expenditures for
- 7 award, we trace a sample of them, just the supporting voice or
- 8 cancelled check.
- 9 Q. And were you able to find those invoices at CASI?
- 10 A. They provided some invoices. The invoices at CASI had
- 11 been -- the original invoices had been scanned into the
- 12 computer, and the original documents had been destroyed. And
- 13 so for some of the invoices, there were multiple copies and
- some of them we had a hard time finding or didn't find.
- 15 Q. Did there come a time while you were conducting the audit
- 16 that you spoke as to an individual by the name of Joan Hayes?
- 17 A. Yes.
- 18 Q. And what is your understanding as to what Joan Hayes was
- 19 doing at CASI?
- 20 A. She had done the first year audit, they're required to have
- 21 an audit by ATP, and she was -- I guess she was there to help
- 22 me with my audit or to provide information about the CASI books
- 23 and records or for answering questions I might have concerning
- 24 the books and records.
- Q. And what did you do with the materials that Joan Hayes SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 provided you?
- 2 A. I used, I used them as a source of my audit.
- 3 Q. And how long were you at CASI for this audit?
- 4 A. I think I got there on Wednesday and I left Thursday or
- 5 Friday of the next week.
- 6 Q. Did you prepare a report after the audit?
- 7 A. Yes. I prepared a memo report, a short report.
- 8 Q. If you could find what's been marked for identification as
- 9 government exhibit 60 in that pile that is in front of you?
- 10 A. Oh, okay. 60.
- 11 THE COURT: What period of time did you audit?
- 12 THE WITNESS: I audited the time 10/1 -- October,
- 13 October 1st, 2001 through 6/30 -- 6/27, 2003.
- 14 Q. Do you have that document in front of you?
- 15 A. Yes.
- 16 Q. Government exhibit 60 marked for identification? Do you
- 17 recognize that document?
- 18 A. Yes.
- 19 Q. Who prepared that document?
- 20 A. I did.
- 21 Q. And what is it?
- 22 A. It is our memo report that was prepared after the June 2003
- visits.
- Q. Is that the visit you just referred to --
- 25 A. Yes.

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- 1 Q. -- a moment ago?
- 2 A. Yes.
- 3 MR. KWOK: Your Honor, the government offers exhibit
- 4 60?
- 5 MR. RUBINSTEIN: I'd like a brief voir dire, your
- 6 Honor.
- 7 THE COURT: Yes, you may.
- 8 VOIR DIRE:
- 9 BY MR. RUBINSTEIN:
- 10 Q. Good afternoon, Ms. Riley.
- 11 A. Good afternoon.
- 12 Q. Now, you prepared this report from what documents?
- 13 A. This reports were prepared, my audit, as a result of the
- 14 documents that Dr. Karron provided during that June visit.
- 15 Q. Dr. Karron or Ms. Hayes?
- 16 A. Dr. Karron, Joan Hayes, Bob Benedict, they were all there.
- 17 Miss Hayes was supposed to be the representative leading me
- 18 through the books and records, and she was representing Dr.
- 19 Karron.
- Q. Do you have copies of those documents?
- 21 A. The documents --
- 22 Q. That you used to --
- 23 A. Yes.
- Q. -- create this report?
- 25 A. Yes.

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- 1 Q. Where are they?
- 2 A. What -- my audit reports, my audit --
- 3 Q. Your what?
- 4 A. In my audit files. I think the document that my report,
- 5 that the report was created from was provided. I mean, what --
- 6 my own -- I have my audit report that I used to prepare this.
- 7 Q. In other words, do you make a report or create some
- 8 writings to show that you used to put into this report,
- 9 Government's 60?
- 10 A. Yes.
- 11 MR. RUBINSTEIN: May I approach the government, your
- 12 Honor.
- THE COURT: Yes, you may.
- 14 (Pause)
- 15 Q. Is it correct, ma'am, that you used Joan Hayes' work papers
- 16 to do your -- this report?
- 17 A. I used the work -- the general ledgers, the cash
- 18 disbursement registers, the -- whatever information, the books
- 19 that were prepared by -- some things that Joan Hayes provided.
- 20 The books that were being reprepared by Frank Spring. He
- 21 also -- I also talked to him while I was there, to do -- to
- come up with the work papers from this report.
- Q. Did you create any work papers, ma'am?
- 24 A. Yes, I did.
- Q. Did you create a general ledger?

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Riley - direct

- 1 A. For this report?
- 2 Q. Yes.
- 3 A. No. I mean no.
- 4 Q. You used Joan Hayes' --
- 5 A. I didn't use Joan Hayes' audit for this as a, my -- the
- 6 final number for this report.
- 7 Q. You testified that you used Joan Hayes' information,
- 8 correct?
- 9 A. I used Joan Hayes' -- I used it, the information that Joan
- 10 Hayes -- that CASI under Karron had asked Joan Hayes to provide
- 11 to me for this audit.
- 12 Q. Did you independently check whatever documentation Joan
- 13 Hayes provided for you, to you?
- 14 A. I did select a sample of the invoices to trace the sample
- 15 of the ledger entries to trace to the invoices for this report.
- 16 Q. Isn't it a fact that Joan Hayes had no general ledger?
- 17 There was no general ledger for CASI; is that a fact?
- 18 A. There were -- CASI used Quick Books, and so whatever the
- 19 system of quick books there were -- there were -- there were
- 20 things for Quick Books.
- 21 Frank Spring, I guess Frank Spring was creating a new
- 22 general ledger or a new ledger system or journal entry system
- for CASI at the time I was there.
- When I called to schedule the initial appointment,
- 25 CASI couldn't meet with me because they were in the process of SOUTHERN DISTRICT REPORTERS, P.C.

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1 redoing their books and records, and so it delayed my visit for

- 2 a couple of weeks to give them time.
- When I arrived, the new books weren't completed yet,
- 4 so they were going to be completed the next day so I waited
- 5 till the next day.
- 6 The -- I used the records that they provided and,
- 7 including Joan Hayes, what Joan Hayes had provided to come up
- 8 with the numbers for this. I did not take Joan Hayes' report
- 9 and copy the numbers to come up with this.
- 10 Q. In fact, you never -- do you have, either from your own
- 11 work, from Frank Spring's -- he was a book keeper of some sort?
- 12 A. Yes.
- 13 Q. Or from Joan Hayes, a general ledger, ma'am?
- 14 A. I know I have some summaries provided different categories,
- 15 and I think there are some ledgers there. I know I have to --
- 16 O. Did you do --
- 17 A. Yes.
- 18 Q. -- a reconciliation? There were checking accounts, were
- 19 there not?
- 20 A. Yes when I -- for the audit?
- 21 Q. Yes. There were checking accounts, CASI had a number of
- 22 checking accounts, did it not?
- 23 A. Yes.
- Q. Did you do a bank reconciliation of the various bank
- 25 accounts of CASI?

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1 A. For this, for this audit?

2 Q. Right.

3 A. No.

4 MR. RUBINSTEIN: Your Honor, I object.

5 MR. KWOK: Sidebar, your Honor?

6 THE COURT: Yes.

7 (Continued on next page)

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- 1 (At the sidebar)
- 2 MR. KWOK: Grounds?
- 3 MR. RUBINSTEIN: The grounds -- these are some
- 4 summary, some documents that she doesn't have, that she's
- 5 unaware of, and she came up with these numbers from where we
- 6 will never never know because we don't have original source
- 7 documents to look at, judge. She clearly relied upon other
- 8 people's work to determine the cost. It's hard to believe that
- 9 someone could be an auditor and not reconcile bank accounts
- 10 that probably had less than 500 checks in total, for the period
- 11 that we're talking about.
- 12 MR. KWOK: Your Honor, we offer her as an expert
- 13 witness under Federal Rules of Evidence 703. Underlying
- 14 documents that an expert rely upon does not have to be
- 15 admissible. That's what auditors do, they don't necessarily
- 16 have the underlying documents. They go to sites to look at the
- 17 company books. They don't necessarily take those documents
- 18 back with them after they've completed an audit. I believe
- 19 that's what happened in this case, that she wasn't -- went to
- 20 CASI to look at the books. She tried to verify some of it to
- 21 have some confidence about the accuracy of the numbers. She
- issued a report. It doesn't mean she took away those documents
- 23 and attached them as some sort of attachment to her report.
- 24 She went there, saw things, talked to people make some
- determinations and issue a report. The fact that she doesn't

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- 1 have the underlying documents should not be an issue, and she's
- 2 an expert. Under Rule 703 the underlying documents --
- 3 THE COURT: I'm going to allow her to testify because
- 4 a auditor does not have to take the records with them or copies
- of the records. They may have to take copies of portions that
- 6 they rely on. But for illustration purposes, the auditor does
- 7 not have to -- just has to use general accepted auditing
- 8 methods to verify the books and accounts of the company.
- 9 MR. KWOK: I think that's exactly right.
- 10 THE COURT: It's the company, it's the company's
- 11 account that the auditor is verifying.
- 12 MR. RUBINSTEIN: Here he didn't have accounts, Judge
- 13 with all due respect, so that's why --
- 14 THE COURT: I don't know. I mean that's another
- 15 matter.
- MR. KWOK: You can cross on it.
- MR. RUBINSTEIN: I don't want --
- 18 THE COURT: They're supposed to have an accountant,
- 19 sorry, as I understood it.
- 20 (Continued on next page)

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- 1 (In open court)
- 2 MR. KWOK: Your Honor, government offers government
- 3 exhibit 60.
- 4 THE COURT: Government 60 is admitted in evidence.
- 5 (Government's Exhibit 60 received in evidence)
- 6 MR. RUBINSTEIN: I object to the --
- 7 THE COURT: I understand. I haven't read it, so I
- 8 don't know what it is. It may be a valid objection after I see
- 9 it.
- 10 MR. KWOK: Do you still have the document in front of
- 11 you?
- 12 THE COURT: Did you use your ordinary auditing
- procedures in reviewing the books of --
- 14 THE WITNESS: Yes.
- 15 THE COURT: CASI?
- 16 THE WITNESS: Yes.
- 17 THE COURT: Whatever books you were presented with?
- THE WITNESS: Yes, yes.
- 19 THE COURT: Those included the report of what was her
- 20 name, Miss Hayes?
- 21 THE WITNESS: Yes.
- 22 THE COURT: And also materials supplied by the book
- 23 keeper?
- THE WITNESS: Yes.
- 25 THE COURT: Was there -- so, and they were in ledger

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- 1 form so you could check them?
- THE WITNESS: Things were in ledger forms.
- 3 THE COURT: I see, all right.
- 4 MR. KWOK: Thank you, your Honor.
- 5 Q. Ms. Riley, what's the date of this report?
- 6 A. July 2003.
- 7 Q. Directing your attention to pages three and four, let's put
- 8 up page -- if we could put them side by side.
- 9 Ms. Riley, what are the findings that you reached in
- 10 this audit report?
- 11 A. That, that CASI had not met the matching cost share
- 12 requirement; that CASI had excess drawdowns of over \$200,000,
- and that they had submitted a --
- 14 THE COURT: Sorry, what was the first thing you said?
- 15 THE WITNESS: That they had not met the matching
- 16 requirements of the NIST award.
- 17 THE COURT: Second.
- 18 THE WITNESS: That they had excess drawdowns of over
- 19 \$200,000.
- Q. And the third?
- 21 A. The third, they had filed inaccurate financial status
- 22 report with us.
- 23 Q. Ms. Riley, let's take this one at a time now. What does it
- 24 mean when you said the company had not contributed matching
- 25 funds?

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- 1 A. That they, they had not -- they had not contributed
- 2 anything to the, to the NIST award.
- 3 Q. What are they supposed to do?
- 4 A. They were supposed to contribute 4.57 percent of the funds.
- 5 MR. RUBINSTEIN: I'm sorry, I didn't digit hear that.
- 6 A. Of the project cost.
- 7 MR. RUBINSTEIN: I missed the percentage, your Honor.
- THE WITNESS: The 4.57 percent.
- 9 Q. And what in fact happened?
- 10 A. They hadn't contributed anything to the cost, the cost
- 11 share to the project.
- 12 Q. And, Ms. Riley, how did you arrive at this conclusion?
- 13 A. By reviewing the, the records of what, and transactions of
- 14 the ledgers.
- 15 Q. The documents provided to you by the company?
- 16 A. Right, the documents provided.
- 17 Q. The second issue you mentioned was the excessive drawdowns.
- 18 Can you explain to us what that means?
- 19 A. They had, they had -- they had received NIST grant funds
- 20 that had been spent on CASI expenses instead of the project
- 21 expenses. They --
- THE COURT: You dropped your voice, I can't hear you.
- 23 You'll have to speak up.
- 24 THE WITNESS: They had, they had -- they had drawn
- down funds from NIST that were spent on CASI business expenses

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- or not allowable NIST project expenses.
- 2 Q. In other words, expenses not approved?
- 3 MR. RUBINSTEIN: Objection, your Honor, to --
- 4 Q. Can you explain what you mean by that?
- 5 THE COURT: Your objection's sustained, form of the
- 6 question, Mr. Kwok.
- 7 MR. KWOK: I apologize, your Honor.
- 8 Q. What do you mean by that?
- 9 A. They had spent -- the money had been spent on rent or
- 10 utilities or on things that were not allowed per the grant
- 11 budget.
- 12 Q. And what is the approximate size of this excess drawdown?
- 13 A. 205,000.
- 14 Q. And again how were you able to make that determination?
- 15 A. From reviewing their books, from the ledgers -- from the
- 16 books that were provided to us by CASI.
- 17 Q. Finally, you mentioned financial status reports. First of
- 18 all, what are financial status reports?
- 19 A. Grant recipients are required to submit financial status
- 20 reports quarterly to inform NIST how they spent the grant
- 21 monies that they drew down for that quarter.
- 22 Q. And what type of information are they supposed to report on
- 23 these financial status reports?
- 24 A. Financial status report includes the amount of matched
- share they provide, and the amount of cost spent with the NIST SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 grant project.
- Q. What was your audit finding about CASI's financial status
- 3 reports?
- 4 A. They reported the drawdown amounts they received from NIST,
- 5 not the expense of what they spent drawdowns on.
- 6 Q. Can you --
- 7 A. Not the cost. They didn't -- they didn't report how they
- 8 spent the grant monies.
- 9 Q. What, in fact, did they report?
- 10 A. They reported the drawdown, the monies they received.
- 11 Q. Any other issue with the financial status reports?
- 12 A. They reported a match share. They did not give a match
- 13 share.
- 14 Q. And how were you able to make those determinations?
- 15 A. By reviewing the financial status reports.
- 16 Q. Is that what you do as an auditor?
- 17 A. Yes.
- 18 Q. Ms. Riley, what, if any, recommendations do you make in
- 19 your audit report?
- 20 MR. RUBINSTEIN: I object to that, your Honor.
- 21 Q. If you could direct us to the page of the document?
- 22 A. It's on page five.
- 23 THE COURT: I don't see the relevance of that.
- MR. KWOK: Your Honor, the audit report contains a
- 25 recommendation or series of recommendations.

864ZKAR6 Riley - direct THE COURT: The --MR. RUBINSTEIN: That's what I objected to, Judge. THE COURT: That's what he objected to, the recommendation part. MR. RUBINSTEIN: 60. MR. KWOK: The relevance, the relevance is --THE COURT: I don't want to hear your argument in front of the jury. MR. KWOK: Could we have a sidebar? THE COURT: I'll have it at the sidebar if you want to half it. It seems to me it's --(Continued on next page)

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- 1 (At the sidebar)
- 2 MR. KWOK: Your Honor, this audit report is the first
- 3 of I believe three audit reports that this auditor prepared.
- 4 She made a series of recommendations in her first audit report,
- 5 and then later on she went back to the company to audit the
- 6 books for a second time. And I'm intending to show that the
- 7 recommendations that she made the first time were not
- 8 undertaken even six months later when she went back to the
- 9 company.
- 10 THE COURT: That has nothing to do with whether or not
- 11 this man improperly used --
- 12 MR. KWOK: It goes to his intent, it goes to his
- intent because the first report told him what was wrong, and
- 14 when six months later she came back, the same thing stays the
- 15 same. It goes to his intent.
- 16 MR. RUBINSTEIN: I submit, your Honor, it doesn't go
- 17 to his intent that he -- the audit report recommendation. He
- 18 hired a separate accountant who submitted responses to Riley,
- 19 to argue the issue of her findings, as to her number of
- 20 findings. So I submit it doesn't go to his intent, and they
- 21 know it. They have this, one of the exhibits.
- 22 THE COURT: Why can't you deal with it in other ways
- 23 instead of dealing with the recommendations, which involves
- 24 suspension, which doesn't seem to me to be relevant to the
- issue in the indictment. Why can't you raise the issue about

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1 whether this report and its recommendations were, were provided

- 2 to Mr., Dr. Karron, and whether she had further discussions
- 3 with him. And they had another audit, et cetera, and you can
- 4 get into what the subject matter is of those items at that
- 5 time, not get into the recommendation of suspension by --
- 6 MR. KWOK: The witness is actually not going to
- 7 answer, I don't believe, that I recommended the grants be
- 8 suspended. She is going to say, I told him that he needs to
- 9 amend his financial status report and make the cost --
- 10 THE COURT: But you asked for the recommendation. She
- isn't being asked what she told him.
- MR. KWOK: Okay, can I ask that?
- 13 THE COURT: The form of your question.
- 14 MR. KWOK: Okay. I understand. Thank you, your
- Honor.
- 16 THE COURT: All right.
- MR. RUBINSTEIN: Your Honor, it's past four.
- 18 THE COURT: Yeah, well, let's just let him get this
- 19 question in.
- MR. RUBINSTEIN: Sure.
- 21 (Continued on next page)

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- 1 (In open court)
- THE COURT: Reframe your question, Mr. Kwok.
- MR. KWOK: Yes, your Honor.
- 4 Q. Ms. Riley, what, if any, actions did you suggest the
- 5 company undertake to improve the negative audit findings in
- 6 this report?
- 7 MR. RUBINSTEIN: Objection, your Honor.
- 8 THE COURT: What actions? I'll allow it.
- 9 The jury is instructed to disregard anything about
- 10 negative or possibly, what have you.
- 11 What actions did you take with respect to Dr. Karron
- 12 and CASI after you made this report? Did you provide him with
- 13 a copy?
- 14 THE WITNESS: Oh, this report? Yes, we provided a
- 15 copy of this report to CASI.
- 16 THE COURT: And what action did you take thereafter?
- 17 Q. What actions did you ask that the company take?
- 18 A. We asked that they reimburse NIST for the funds drawn down
- 19 in excess of the federal amount, and we asked that they provide
- 20 corrected financial status reports for the period of 2002 and
- 21 for -- and financial status reports for the 2003 year.
- 22 Q. After you issued this audit report, what, if any, further
- involvement did you have with CASI?
- 24 A. We went -- we did a -- we did another audit in December of
- 25 2003.

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- 1 Q. Why do you do another audit in December of 2003?
- 2 A. Well, we had always planned on issuing -- this is a short
- 3 report, our reports normally are longer, and provide more
- 4 information in questioned costs, so we always planned on
- 5 issuing another report. But CASI had obtained another CPA for
- 6 the audit when we were ready to go back, and so -- it created
- 7 new books and records, and so we had another site visit.
- 8 Q. Approximately, how much time passed between this second
- 9 visit and the issuance of that report?
- 10 A. The second -- the report was issued in July, and the second
- visit was in December 2003, so about five months.
- 12 Q. Now, by this time had CASI undertaken any of the actions
- 13 that you suggested?
- 14 A. They had --
- MR. RUBINSTEIN: Objection, your Honor.
- 16 THE COURT: I think this may be a good point to
- 17 suspend for the day, sorry. But I'm aware of obligation, other
- 18 obligations that I have to carry out and have to be carried out
- 19 by the attorneys. So I think we better suspend ten minutes
- 20 after four. Thank you for being so prompt this morning. I
- 21 hope you get off to a good start tomorrow at 9:30, and we'll
- 22 see you.
- I hope you get coffee and cookies or whatever they
- 24 serve you.
- 25 (Jury exits the courtroom)

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864ZKAR6 Riley - direct

- 1 (In open court; jury not present)
- 2 THE COURT: Oh, did you give Ms. --all right, you can
- 3 step down.
- 4 THE WITNESS: Okay.
- 5 THE COURT: Is there anything else to take up? How
- 6 long will with this witness take?
- 7 MR. KWOK: I believe approximately 45 minutes to an
- 8 hour.
- 9 THE COURT: It's awful long. Go ahead. I'm just
- 10 trying to move this along.
- 11 MR. KWOK: I understand, but as I told your Honor we
- 12 believe that we may be able to move this case a little bit.
- 13 While we're here, should we address the objection that
- 14 Mr. Rubinstein just made?
- THE COURT: Yes, you better.
- 16 MR. KWOK: It's our position that that goes to his
- 17 intent, as Ms. Riley testifies she suggested a number of
- 18 actions that the company undertake, including paying back the
- 19 money. And five months later she went back to issue the more
- 20 fulsome report, and at that time it was still outstanding. So
- 21 I understand part of defense's argument is they did everything
- 22 they could to remedy the situation, and that's simply not the
- 23 case. And it goes to the defendant's state of mind. And if he
- intends to argue that there were some other people involved who
- 25 were advising the defendant, he can cross on that. But that

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1 seems to be a major primary issue in this case and we should be

- 2 allowed to have the witness testify to that, in fact.
- 3 THE COURT: Well, testify to what went on. I follow
- 4 your argument. But is there any testimony about whether
- 5 there -- funds were available for the repayments that the
- 6 government wanted?
- 7 MR. KWOK: Well, I believe there's going to be
- 8 testimony that all -- the CASI money comes from the NIST grant,
- 9 and the company had promised to put some cost share within, in
- 10 the proposal and it was never paid.
- 11 THE COURT: 280,000 is a lot more than the cost share.
- 12 It's a little hard to pay 280,000 and meet your cost share too.
- 13 They --
- MR. KWOK: But the witness, I believe, is going to
- 15 testify that the company has paid zero, that --
- 16 THE COURT: What?
- 17 MR. KWOK: Had not paid back anything, even after the
- 18 issuance of her report, not the full amount, just nothing at
- 19 all. I believe that's going to be the testimony, and I think
- that goes to the intentional misapplication of grant funds.
- 21 THE COURT: They have funds; the company have funds?
- 22 MR. KWOK: The company does not have independent
- 23 sources of funds, that's the Government's position. However,
- 24 the reason they didn't have funds is because they misspent all
- 25 those funds that they had already drawn down, so it's not --

864ZKAR6 Riley - direct

- 1 THE COURT: How does it go to the intent?
- 2 MR. KWOK: Well, it goes to the intent because they
- 3 didn't even try to put in the cost share that they had promised
- 4 the government that they would.
- 5 THE COURT: They didn't have any funds, how could they
- 6 do it?
- 7 MR. KWOK: Well, I believe Mr. Karron -- Mr.
- 8 Rubinstein elicited testimony from some witnesses that at some
- 9 point in time the defendant mortgaged, took out a second
- mortgage of his apartment to repay \$60,000.
- 11 THE COURT: Is the apartment owned by CASI?
- 12 MR. KWOK: No. It was owned by Dr. Karron personally.
- 13 THE COURT: The grant was to CASI, was it not?
- 14 MR. KWOK: It was. But if Mr. Rubinstein, as he tried
- 15 to elicit from some of these witnesses, that at some point in
- 16 time he, although after the period alleged on the face of the
- 17 indictment, he took out a second mortgage on his home to try to
- 18 pay back some of that money that he misapplied, to suggest that
- 19 he tried to remedy the situation, he puts that issue squarely
- 20 at play and we should be allowed to counter that suggestion.
- 21 THE COURT: Oh, but you're making a claim that -- I
- 22 don't know what you're making. I don't know the nature of the
- 23 full case, but you can't just -- the government made the grant
- 24 not to Dr. Karron, but the government made the grant to CASI.
- MR. KWOK: That's correct, your Honor. But the reason SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 the company did not have funds was because it had been already
- 2 misspent all those funds.
- 3 THE COURT: That's all right, but they overspent.
- 4 MR. KWOK: I'm sorry?
- 5 THE COURT: They did, they overspent.
- 6 MR. KWOK: Intentionally misspent. The only basic
- 7 point I'm trying to elicit from this witness is the defendant
- 8 knew about these problems. He undertook some of the remedial
- 9 actions that she recommended; namely, to revise the financial
- 10 status report that we saw to correct the cost share amount that
- 11 they falsely reported to the government where they didn't pay
- 12 anything they had reported that they had paid ten's of
- 13 thousands of dollars, but they never paid that money back, and
- 14 that's an integral part of what went on at the company, that --
- 15 THE COURT: They didn't have the funds to pay it back.
- 16 They spent it.
- 17 MR. KWOK: But they continued to draw -- actually,
- 18 they -- I, I don't think that's quite true, because the company
- 19 continued to drawdown ATP money.
- 20 THE COURT: But you have to convince me -- I'll have
- 21 to hear it -- you'll have to convince me promptly that
- 22 argument, but --
- 23 MR. KWOK: As I said a moment ago, I believe Mr.
- 24 Rubinstein had suggested in the past two days that at some
- 25 point in time Dr. Karron took out a second mortgage on his home

864ZKAR6 Riley - direct

- 1 to try to pay back the money that he --
- THE COURT: Tell me where, show me in the record. I
- 3 don't recall him saying that in this case on trial. If he --
- 4 maybe one of your cohorts does. I don't remember him saying
- 5 that. I'm aware of the fact that there was a mortgage, but --
- 6 MR. KWOK: We will go get the transcript.
- 7 THE COURT: I'm not sure about this whole theory of
- 8 this evidence proving the -- being admissible. So you better
- 9 have something for me in the morning.
- 10 MR. KWOK: We will do that. And --
- 11 THE COURT: In writing so I can read it, or tonight if
- 12 you want to read the cases that you're relying on.
- 13 MR. KWOK: Very well, your Honor. And in the
- 14 alternative, I will go back to revisit the testimony that I
- intend to elicit and maybe we can avoid the whole problem by
- 16 just moving quickly through the audit reports without dwelling
- 17 too much on the recommendation portions of the report, because
- 18 there's other ways we can show what we need to show.
- 19 THE COURT: I'm having trouble with this whole theory
- 20 that the failure to repay may be evidence of his intent in
- 21 misspending the money.
- 22 MR. KWOK: Even if --
- 23 THE COURT: I'm having trouble with that, so you'll
- 24 have to give me cases, maybe Mr. Rubinstein's office can too,
- 25 since he's got his assistant here today.

864ZKAR6 Riley - direct

1 MR. RUBINSTEIN: We have another question that might

- 2 help that, Judge, but that's when we finish with this first.
- 3 It's more in the housekeeping nature.
- 4 MR. KWOK: I will do some research and try to give
- 5 your Honor case law.
- 6 But the only other point I would make on this point is
- 7 that even if it does not go to his intent, it goes to the basic
- 8 facts of what happened to the money. She's going to --
- 9 THE COURT: It doesn't go to basic. Whatever happened
- 10 to the money, happened to the money. There may be, there may
- 11 be clarification as to. But the conversations with Dr. Karron
- 12 don't have anything to do with what happened to the money, as I
- 13 understand it. I mean, she may have gotten further, further
- 14 materials from the new auditor, the new accountants or what
- 15 have you, but I'm having trouble with the, this element of the
- 16 case.
- MR. KWOK: We'll submit a letter to the Court.
- 18 THE COURT: I don't know the other witnesses you have.
- 19 MR. RUBINSTEIN: Your Honor, in order to facilitate
- 20 what your Honor suggested of hopefully helping the Court in
- 21 resolving the issue, there is a card that the security took
- 22 that permits us to use the internet, and we would need a --
- 23 it's a Sprint PCS card that -- in other words, they don't let
- 24 you bring in a computer that gives you access to the internet,
- 25 but actually that would be --

	864ZKAR6	Riley - direct
1		THE COURT: Why do we need the internet?
2		MR. RUBINSTEIN: We want to be able to go into Westlaw
3	and, you	know, do some research and stuff.
4		THE COURT: Oh don't better not do it here,
5	that's a	11.
6		MR. RUBINSTEIN: Okay, Judge. Thank you.
7		THE COURT: All right. Are we all done?
8		MR. KWOK: Yes, thank you.
9		(Adjourned to June 5, 2008 at 9:30 a.m.)
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	865ZKAR1	
1	UNITED STATES DISTRICT COURT	
1	SOUTHERN DISTRICT OF NEW YORK	
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3	UNITED STATES OF AMERICA,	New York, N.Y.
3		
4	V.	S2 07 CR 541 (RPP)
4		
5	DANIEL B. KARRON,	
5		
6	Defendant.	
6		
7	x	
7		
8		
8		June 5, 2008
9		9:20 a.m.
9		
10		
10	Before:	
11		
11	HON. ROBERT P. PATT	TERSON, JR.,
12		
12		District Judge
13		
13		

APPEARANCES

15	MICHA	AEL J. GARCIA
15		United States Attorney for the
16		Southern District of New York
16	BY:	STEVEN KWOK
17		CHRISTIAN EVERDELL
17		Assistant United States Attorneys
18		
18	RUBI	NSTEIN & COROZZO, LLP
19		Attorneys for Defendant
19	BY:	RONALD RUBINSTEIN
20		
20	Also	Present: Rachel Ondrik, U.S. Dept. of Commerce
21		Kirk Yamatani, U.S. Dept. of Commerce
22		
23		
24		
25		
		SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 (In open court; jury not present)
- 2 THE COURT: We have several matters to take up.
- 3 MR. RUBINSTEIN: First of all, I want to tell the
- 4 Court that Dr. Karron is here. I picked him up and drove him
- 5 here myself, as I promised your Honor I would. He's doing
- 6 something --
- 7 THE COURT: He's here?
- 8 MR. RUBINSTEIN: Yes, he is. I brought him here.
- 9 Much to my chagrin, I picked him up and deposited him. But
- 10 he's making a call for me now, so he's -- he consented to be
- 11 excused during the legal, any legal arguments we make here.
- 12 THE COURT: You consent to his absence?
- MR. RUBINSTEIN: Yes, your Honor.
- 14 THE COURT: For these arguments? All right, thank
- 15 you.
- 16 Now, we had some issues about whether the Government's
- 17 Exhibit 2,000, and 2,001 were 3500 material that were not
- 18 produced to the defendant.
- 19 MR. RUBINSTEIN: Yes, your Honor. And the reason for
- 20 that is that when I was cross-examining --
- 21 THE COURT: It came up in cross as a result of your
- 22 cross-examination.
- 23 MR. RUBINSTEIN: Yes, because I had never been
- 24 provided with those documents, so I was totally unaware.
- THE COURT: Why is it 3500 material?

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- 1 MR. RUBINSTEIN: Well, just as all the other financial
- 2 statement revisions was 3500 material that was turned over of
- 3 this witness.
- 4 THE COURT: It's not a financial statement, as I read
- 5 it. But why is it 3500 material?
- 6 MR. RUBINSTEIN: It's the same as -- it was a revised
- 7 financial statement. The witness testified that she had
- 8 received financial statement -- in other words, I showed that
- 9 the financial statements that the government had in evidence
- 10 were submitted August 13th, 2003. The witness said that she
- 11 had seen earlier ones. We didn't have any earlier ones. We
- 12 had the ones August 13th, and I -- and she said she had them in
- 13 her file. So obviously the government has a whole file that
- 14 they never turned over, never made available either on Rule 16
- or under 3500 material as to this witness, and then they
- 16 introduce it. And it's my fault because I was doing something
- 17 else at the time, and I should've known when they came up with
- 18 a number like 2,000, that's what got my interest, it was a new
- 19 number sequence in this case and --
- 20 THE COURT: Well, let me hear from the government.
- MR. EVERDELL: Well, your Honor, a few things. I
- 22 think your Honor's right, I don't see how these are her
- 23 statements. These are revised financial reports that somehow
- 24 she recalls seeing, so I don't see how these become her prior
- 25 statements.

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- 1 THE COURT: Well, they're proposed -- what were they
- 2 exactly? They're proposed financial statement revisions, is
- 3 that what they are?
- 4 MR. EVERDELL: These were these financial status,
- 5 quarterly financial status reports.
- 6 THE COURT: Financial, proposed financial status
- 7 reports.
- 8 MR. EVERDELL: Right.
- 9 THE COURT: Which were not approved.
- 10 MR. EVERDELL: There, as the witness testified, there
- 11 was some discussion about proposed financial status reports
- 12 with the defendant. And she recalls seeing these and having
- 13 other, other proposed revised financial status reports that she
- 14 saw in the grant file. So these, I don't think, are her
- 15 statements. And plus the fact that I believe the issue is
- 16 waived as well because defense counsel didn't object when I
- 17 showed it to him and only came up after the fact, so.
- 18 THE COURT: Well, these are not statements by her or
- 19 do they contain statements by her? If they're witness
- 20 statements, I have a problem. I remember there was some
- 21 notation on one of them as I recollect.
- 22 MR. EVERDELL: There was some are arithmetic notations
- and there was a notation down at the bottom of one of them,
- that's correct. I'm not sure if it came out whose those were.
- 25 THE COURT: Hers, I believe --

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1	MP	EVERDELL:	Yeah

- 2 THE COURT: -- is the testimony.
- 3 MR. EVERDELL: In addition, your Honor, for the 3500
- 4 material we wrote a letter to defense counsel saying that,
- 5 because discovery was so voluminous in this case, that if we
- 6 had already provided it in discovery, we weren't going to
- 7 provide it again at separate 3500 material. We did provide a
- 8 copy of the grant file in discovery, and you know, I mean --
- 9 THE COURT: You did provide the grant file? I thought
- 10 they were included.
- 11 MR. EVERDELL: It would have. Your Honor, I confess
- 12 that when we tried to look through the discovery last night to
- 13 see if we can see these exact documents that we showed
- 14 yesterday, the discovery copy, the Bates stamped discovery
- 15 copy, I confess we couldn't find them in the Bates stamped
- 16 discovery copy.
- 17 The issue is that the grant file was copied several
- 18 years ago when the agents went to D.C. to copy the grant file,
- 19 that was what we produced. And, apparently, these were not
- 20 copied, for whatever reason.
- 21 The agents at the table had her own copy of the grant
- 22 file that she requested some, a little bit later, just because
- 23 the copy portion that we produced was -- it wasn't organized as
- 24 effectively as she would have liked it to be, so she just
- 25 requested another copy of it. That's what we were using

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- 1 yesterday when I was told of these documents. So I had assumed
- 2 that because we had produced the grant file, that those
- documents were also included in the grant file. Apparently, in
- 4 my review of the discovery last night, I don't see them.
- 5 But I raise it that, you know, this only came up on
- 6 cross-examination as the defendant was trying to apparently
- 7 making it seen like Ms. Snowden wasn't doing her job properly.
- 8 I hadn't intended to bring these to the jury's attention at
- 9 all. And plus this is a conversation she had with the
- 10 defendant himself, so this isn't really any great surprise on
- 11 the part of the defendant. She's testifying about discussions
- 12 she had with him about additional revisions to the financial
- 13 status reports. So this isn't really a great surprise to him
- 14 or shouldn't have been. So while I admit I think because of
- 15 the review of discovery last night I can't say for certain that
- 16 these particular two documents were turned over to the
- 17 defendant in discovery, I don't think this is any great
- 18 surprise to the defendant. And given the nature of how the
- 19 documents came up and the fact that defense counsel didn't
- 20 object when we first tried to introduce them, I don't think
- 21 this is -- should be an issue.
- 22 THE COURT: He didn't object until after they were
- 23 admitted in evidence.
- MR. EVERDELL: Correct, your Honor.
- 25 THE COURT: I don't know what the law is on that,

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- 1 under those circumstances.
- MR. RUBINSTEIN: Your Honor, I would have no problem
- 3 if your Honor wanted to give a limiting instruction that Rule
- 4 3500 requires the government to turn over all the material
- 5 about -- that a particular witness who was going to testify and
- 6 that, you know, and it wasn't done as to Exhibit 2,000 and
- 7 that's --
- 8 THE COURT: Those documents were overlooked? Is that
- 9 what you want?
- 10 MR. EVERDELL: Your Honor, I don't -- until yesterday
- 11 when this issue came up, I don't think we knew that those
- 12 documents, those notations were Hope Snowden' notations. We
- 13 saw them in the grant file because it looked like these were
- 14 revisions and we wanted to, because the issue came up on
- 15 cross-examination, it was clear that there were other revisions
- 16 to the financial status reports. And so we thought, okay, this
- 17 is a copy of the grant file, we thought we produced the grant
- 18 file so we're going to introduce these 'cause we don't want it
- 19 to look as if Hope Snowden wasn't doing her job, which is
- 20 clearly what the --
- 21 THE COURT: Telling the truth is --
- 22 MR. EVERDELL: Wasn't telling the truth, which is
- 23 exactly what the defense counsel was I think trying to do with
- that cross-examination. So it was done in good faith. I don't
- 25 think a limiting instruction to that effect is appropriate

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- 1 here. Plus the issue of waiver, I mean these were things that
- 2 we showed to the defendant and he did not object to it. He had
- 3 the opportunity to review them before I elicited them from the
- 4 from the witness, so.
- 5 MR. RUBINSTEIN: That's not exactly accurate, your
- 6 Honor. They didn't give me a copy. They didn't hand me a
- 7 copy.
- 8 THE COURT: They --
- 9 MR. RUBINSTEIN: They --
- 10 THE COURT: They did show them to you, Mr --
- 11 MR. RUBINSTEIN: No. They offered to show them and I
- 12 did not look at them. It's my fault.
- 13 THE COURT: I saw them show them to you.
- MR. RUBINSTEIN: I didn't look at --
- 15 THE COURT: Whether you examined them is another
- 16 issue.
- MR. RUBINSTEIN: I conceded that, Judge.
- 18 THE COURT: What?
- 19 MR. RUBINSTEIN: I conceded that from the outset, from
- 20 yesterday, today. I'm not suggesting they didn't offer it to
- 21 show me them, okay. And as I said, I was late in making the
- 22 objection. You know, just as the defendant's not entitled to a
- 23 perfect trial, he's not entitled to a perfect lawyer.
- 24 THE COURT: I want to see those documents, but I want
- 25 to -- and then I want to consider what to do. Because I think SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 it's acknowledged that the two documents were apparently not at
- 2 the discovery materials turned over.
- 3 Now whether, whether the discovery materials -- and I
- 4 think the witness testified, I may be wrong, that the
- 5 handwritten notations on the document were hers. So I suppose
- 6 they could be considered prior statements of a witness.
- 7 MR. EVERDELL: Your Honor, I mean the written
- 8 statements there were not the subject of testimony. The
- 9 testimony was --
- 10 THE COURT: That's true.
- 11 MR. EVERDELL: -- was did she in fact have discussions
- 12 with the defendant about additional revised financial status
- 13 reports.
- 14 THE COURT: They weren't the subject of her direct
- 15 testimony.
- MR. EVERDELL: Correct.
- 17 THE COURT: She was responded to on cross-examination.
- 18 MR. EVERDELL: Exactly. I did not intend to get into
- 19 this at all until Mr. Rubinstein was, apparently, trying to
- 20 test her credibility and I felt like this was something I
- 21 needed to address on redirect.
- 22 The issue really was did she have discussions with the
- 23 defendant about additional revised financial status reports,
- 24 which she testified to before I even introduced the documents.
- 25 She said, yes, I had discussions with him; yes, there were

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- 1 further revisions. I was simply trying to find documentary
- 2 evidence because the defense counsel was trying to -- was
- 3 asking the witness, did you make any notes. She said yes. So
- 4 I looked to see if we had evidence of this, and it appears
- 5 there was. Now, it's true that these were not -- apparently
- 6 were not turned over in discovery, but --
- 7 THE COURT: I think you misspoke about any notes. But
- 8 what he asked her was if there had been any other financial
- 9 status reports in between the two, the financial status report
- 10 of the first one and the so-called revised one of 8/13
- 11 something or other.
- MR. EVERDELL: That's correct, your Honor.
- 13 THE COURT: Well, I want to consider this and see
- 14 what, if anything, should be done about it.
- 15 MR. EVERDELL: And your Honor, additionally --
- 16 THE COURT: Now let's -- we've got a jury waiting
- 17 here. We got another problem.
- 18 Mr. Juror number eight will not be in, Mr. Naveen
- 19 sprained his ankle and has difficulty walking and will not be
- in today, so we'll have to replace him.
- 21 All right. Now, there's another issue we have that
- 22 came at the end of the day, right?
- 23 MR. KWOK: That's correct. I will not press that line
- of questioning, your Honor.
- 25 THE COURT: Not refer to it in summation either; not SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 make that argument in summation.
- 2 MR. KWOK: Certainly. But the only other thing I want
- 3 to flag for the Court, I believe your Honor now has a proposed
- 4 new stipulation which I will read into the record before we
- 5 call the witness.
- 6 THE COURT: All right. Otherwise are we ready?
- 7 MR. KWOK: The government is ready.
- 8 MR. RUBINSTEIN: Defense is ready, your Honor. If I
- 9 can just run out and so I don't have to run out later.
- 10 THE COURT: Maybe I should too.
- 11 MR. EVERDELL: Should we get the witness, your Honor?
- 12 THE COURT: You better have the witness ready.
- 13 (Recess)
- 14 THE COURT: Please be seated.
- 15 All right, we're bringing in the jury.
- 16 (Jury entering)
- 17 THE COURT: Good morning. Please be seated. Good
- 18 morning, ladies and gentlemen.
- 19 THE JURY: Good morning.
- 20 THE COURT: Mr. Monteagudo received a message from
- 21 Mr. Naveen John, juror number eight. He sprained his ankle
- 22 yesterday and cannot walk this morning, and as a result he will
- 23 not be in today. And, accordingly, I'm going to ask Ms. Chang,
- the first alternate juror, to take his place as juror number
- eight and we'll proceed with the trial, and I guess we're still

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- on the direct examination with Ms --
- MR. KWOK: Ms. Riley, your Honor.
- 3 THE COURT: I'm sorry.
- 4 MR. KWOK: Ms. Riley.
- 5 THE COURT: Ms. Riley, yes.
- 6 MR. KWOK: May I proceed?
- 7 THE COURT: Ms. Riley, you're reminded you're still
- 8 under oath. The jury is reminded that on the succeeding day
- 9 when the witness takes the stand, I'm obliged, as a matter of
- 10 court procedure, to remind them they're still under oath.
- 11 Please.
- MR. KWOK: Thank you, your Honor.
- 13 BELINDA RILEY,
- 14 called as a witness by the government,
- 15 having been previously sworn, testified as follows:
- 16 DIRECT EXAMINATION
- 17 BY MR. KWOK:
- 18 MR. KWOK: Your Honor, before I proceed with the
- 19 direct examination, I would like to read a proposed stipulation
- 20 into the record.
- 21 THE COURT: All right, sir.
- 22 MR. KWOK: United States of America versus Daniel B.
- 23 Karron, defendant S2 07 Crim. 542. It is hereby stipulated and
- 24 agreed by and among the United States of America by Michael J.
- 25 Garcia, United States Attorney for the Southern District of New SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 York, Steve Kwok and Christian Everdell, Assistant United
- 2 States Attorneys of counsel, and defendant Daniel B. Karron, by
- and with the consent of his attorney Ronald Rubinstein,
- 4 Esquire, paragraph three of Government exhibit 900 is amended
- 5 to read as follows: The documents marked as government exhibit
- 6 0 are the credit card statements for the American Express cards
- 7 of Computer Aided surgery, Inc. CASI, and Daniel B. Karron, the
- 8 defendant, from in or about October 2001 to in or about April
- 9 of 2003.
- 10 It is further stipulated and agreed that government
- 11 exhibit 90 and this stipulation marked for identification as
- 12 government exhibit 900A, may be received in evidence as
- 13 government exhibits at trial, and it is signed New York, New
- 14 York, June 5th, 2008 on behalf of the United States by Steve
- 15 Kwok and on behalf of Daniel B. Karron, Ronald B. Rubinstein,
- 16 Esquire.
- 17 THE COURT: All right, Government's exhibit 90 is
- 18 admitted in evidence. I think Government's exhibit 900 was
- 19 admitted in evidence.
- THE DEPUTY CLERK: This is 900A?
- 21 THE COURT: Excuse me. Government's exhibit 900A is
- 22 admitted in evidence.
- 23 (Government's Exhibit 900A received in evidence)
- MR. KWOK: Thank you, your Honor.
- BY MR. KWOK:

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- 1 Q. Good morning, Ms. Riley.
- 2 A. Good morning.
- 3 O. Before we broke yesterday you mentioned you went back to
- 4 CASI to do a second audit; is that right?
- 5 A. Yes.
- 6 Q. When did you go back to that, to do that second audit?
- 7 A. In December of 2003.
- 8 Q. So how long was that between your first audit and this
- 9 time?
- 10 A. About five months.
- 11 Q. Where did you go to conduct this second audit?
- 12 A. To his accountant, Mel Spitz's office in Manhattan.
- 13 Q. In conducting your second audit, what materials did you
- 14 examine?
- 15 A. I examined the books and records provided by Mel Spitz.
- 16 Q. So are these materials that you examined for the second
- 17 audit different or the same from the materials you relied on
- 18 the first time?
- 19 A. It was different ledgers. The invoices or whatever would
- 20 been the same, but the ledgers were new.
- Q. Did there come a time when you completed this second audit?
- 22 A. Yes.
- Q. When was that, approximately?
- 24 A. I think the report was probably issued in February or
- 25 March 2004.

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- 1 Q. And what period did your second audit cover?
- 2 A. It covered the period 10/1, 2001 through June 27th, 2003.
- 3 THE COURT: What date in 2003?
- 4 THE WITNESS: June 27th, when the award was suspended.
- 5 Q. Did you issue a report after the second audit?
- 6 A. Yes.
- 7 Q. Ms. Riley, if you could take a look at the stack of
- 8 documents in front of you. I believe there's one marked for
- 9 identification government exhibit 61?
- 10 A. Yes.
- 11 THE COURT: 61 for identification?
- MR. KWOK: That's correct, your Honor.
- 13 THE COURT: It's not admitted in evidence yet, ladies
- 14 and gentlemen.
- 15 Q. Do you recognize this document, Ms. Riley?
- 16 A. Yes.
- 17 Q. Who prepared that document?
- 18 A. I did.
- 19 O. And what is it?
- 20 A. It's the draft report that we issued as a result of the
- 21 December 2003 review of CASI's records.
- 22 Q. Is that the report you just referred to?
- 23 A. Yes.
- MR. KWOK: Government offers exhibit 61.
- MR. RUBINSTEIN: Your Honor, except for conclusions, I

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- 1 have no objection, your Honor.
- 2 THE COURT: Exhibit 61 is admitted in evidence. It's
- 3 kept in the regular course of business by the agency; is that
- 4 correct?
- 5 THE WITNESS: I'm sorry, what?
- 6 THE COURT: This report is kept in the regular course
- 7 of business by the Office of Inspector General?
- 8 THE WITNESS: Yes, yes.
- 9 THE COURT: And it's the regular course of business to
- 10 keep these, this report --
- 11 THE WITNESS: Yes.
- 12 THE COURT: -- in its records?
- 13 THE WITNESS: Yes.
- 14 THE COURT: All right, I'll allow it.
- MR. KWOK: Thank you, your Honor.
- 16 THE COURT: Exhibit 61 is admitted in evidence.
- 17 (Government's Exhibit 61 received in evidence)
- 18 Q. Now, Ms. Riley, I direct your attention to page seven of
- 19 that document. If you could put that up on the screen.
- 20 THE COURT: What I have is page seven -- Mr -- I don't
- 21 have a page seven to that document, 61. I have -- I have in
- 22 61 --
- 23 MR. KWOK: You have to keep flipping to -- the initial
- 24 pages don't have numbers on it, and then there are little one,
- 25 little two, and then --

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1 THE COURT: Those are marked draft.

- 2 THE WITNESS: Yes.
- 3 MR. KWOK: Yes.
- 4 THE WITNESS: It's a draft report.
- 5 THE COURT: It's not a final report.
- 6 THE WITNESS: Right. The final --
- 7 MR. KWOK: I can -- I'm happy to explain that at
- 8 sidebar.
- 9 THE COURT: Not you explain it, let the witness
- 10 explain it.
- 11 MR. KWOK: Okay. I will lay some foundation, your
- Honor.
- 13 THE COURT: She's the witness, not you.
- 14 Q. Ms. Riley, can you explain the difference between a draft
- 15 report and a final report?
- 16 A. Yes. We issue the draft -- we issue a draft report and
- 17 give the grantee an opportunity to respond to our findings and
- any errors we may have in our numbers, our wordings or any --
- 19 and then we issue a final report and include their response to
- 20 our draft report.
- 21 Q. Thank you.
- 22 THE COURT: So you want page seven of the draft report
- 23 that's accompanying the --
- MR. KWOK: Yes.
- 25 THE COURT: -- that is attached to exhibit 61?

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1 MR. KWOK: That's correct, your Honor, page seven of

- 2 the draft report, exhibit 61, we're just waiting for it to be
- 3 up on the screen. Can we blow that up.
- 4 Q. Ms. Riley, what are the findings that you reached?
- 5 MR. RUBINSTEIN: I object to this. There's no
- 6 foundation.
- 7 THE COURT: Objection overruled.
- 8 A. We determined that the government was -- we found that the
- 9 government -- the refund was due the federal government of
- 10 \$582,000, approximately.
- 11 Q. Now, if we could go two pages after that. It's appendix
- one, page one of eight. What are some of the examples of the
- 13 funds that you disallowed?
- 14 A. Funds that were used to pay for rent, internet --
- 15 MR. RUBINSTEIN: I can't hear the witness, your Honor.
- 16 I'm sorry.
- THE COURT: I'm sorry, I'm sorry?
- 18 MR. RUBINSTEIN: I can't -- I couldn't hear the
- 19 witness.
- THE WITNESS: I'm sorry.
- 21 THE COURT: I think you're too -- I think you're too
- 22 close -- Robert is not here to.
- 23 THE WITNESS: Oh, if I sit back, is this better?
- MR. RUBINSTEIN: Thank you.
- 25 THE COURT: It's better if you speak up.

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- 1 THE WITNESS: Okay.
- 2 THE COURT: All right.
- 3 THE WITNESS: It sounds loud to me. Okay.
- 4 Monies that were spent for rents, internet --
- 5 THE COURT: Keep talking into the mike. As soon as
- 6 you start turning looking around to the Court Reporter your
- 7 voice gets muffled.
- 8 THE WITNESS: Okay.
- 9 A. For rent, internet, utilities, and certain other CASI
- 10 expenditures.
- 11 Q. And I direct your attention to page eight now of the
- 12 report, the one page previous to the one we just looked at.
- 13 Directing your attention to the third full paragraph. What
- 14 finding did you make there?
- 15 A. That on October 26 CASI received grant funds of 100 and --
- 16 THE COURT: October 26 of what year?
- 17 THE WITNESS: Oh, of 2001, CASI received grant funds
- of \$150,000, and they immediately wrote Dr. Karron a check for
- 19 \$75,000 as an advance on salary and paid back rent of \$2,000 a
- 20 month for the period, January 2000 through September of 2000,
- 21 which was prior to the award of the grant.
- 22 O. And what did you conclude about these series of
- 23 transactions?
- MR. RUBINSTEIN: Objection, your Honor.
- 25 THE COURT: I think you need --

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- 1 MR. KWOK: Your Honor --
- 2 THE COURT: Objection -- I think you need a foundation
- 3 question, Mr. Everdell. First, did she -- was this based on
- 4 any --
- 5 MR. KWOK: Certainly, your Honor.
- 6 THE COURT: On what did she base this conclusion.
- 7 O. Ms. Riley, before you conducted this audit, did you have
- 8 occasion to review the terms and conditions of the ATP grant?
- 9 A. Yes, I did.
- 10 Q. And what did you conclude about these series of
- 11 transactions?
- 12 A. The rent would be an indirect cost, which would be
- unallowable on that, but that was also prior to the award so it
- 14 would not be allowed.
- 15 THE COURT: Robert, would you fix the mike so it's in
- 16 the right spot here. We're having trouble hearing her voice.
- Just so she gets up to it close and then it's all --
- 18 THE WITNESS: Do I need to sit back?
- 19 THE DEPUTY CLERK: She's also got -- looking at
- 20 documents so it's sort of hard. She's up closer. It's okay.
- 21 Keep --
- THE WITNESS: Okay.
- 23 THE DEPUTY CLERK: Right where you are. I'm going to
- 24 move your water right here.
- 25 THE WITNESS: Okay.

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- 1 THE DEPUTY CLERK: You should be okay. It's okay.
- 2 Q. I'm sorry, can you continue with the answer? The question
- 3 was, what did you conclude about the series of transactions?
- 4 A. That the rent payments were -- would have been preaward
- 5 cost and not allowable, but they were also indirect costs that
- 6 they would not have been allowable costs. And the advance, we
- 7 don't, we don't -- we considered this like that he used it as a
- 8 personal loan account. You're not -- you don't, you don't pay
- 9 advance salary out of grant cost.
- 10 Q. If you could speak up, Ms. Riley, that would be very
- 11 helpful.
- 12 A. Okay.
- 13 O. Ms. Riley, do you know whether the grant -- the defendant
- gave a written response to your audit report?
- 15 A. Yes, he did.
- 16 Q. And how do you know that?
- 17 A. Because it was sent to me, or to our office.
- 18 Q. And did you issue a final report after reviewing the
- 19 defendant's response?
- 20 A. Yes, we did.
- 21 Q. I'm showing you what is next in the pile, I believe, marked
- 22 for identification government exhibit 62. Do you know what
- 23 that is?
- 24 A. Yes.
- 25 O. What is it?

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- 1 A. It's our final report that we issued.
- Q. Who prepared the document?
- 3 A. I did.
- 4 MR. KWOK: Government offers exhibit 62.
- 5 MR. RUBINSTEIN: Same limited objection, your Honor,
- 6 as to opinions of this witness.
- 7 THE COURT: This is kept in the regular course of
- 8 business by the agency.
- 9 THE WITNESS: Yes, sir.
- 10 THE COURT: All right. I'll allow it, 62 in evidence.
- 11 (Government's Exhibit 62 received in evidence)
- 12 Q. Ms. Riley, after this audit report, exhibit 62, did you
- conduct a third analysis of CASI's bank accounts?
- 14 A. Yes, I did.
- 15 Q. What did you do?
- 16 A. After I was provided the bank account records for the, for
- 17 the year-and-a-half period of the grant, and I scheduled out
- 18 them, the checks by payee, amount, date, and the electronic
- 19 funds transfers were taken from the bank statements.
- 20 Q. What bank are we talking about?
- 21 A. Chase.
- 22 Q. And these bank statements belonged to what person or what
- 23 entity?
- 24 A. CASI.
- Q. Did you also review the bank statements of Dr. Karron

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- 1 personally?
- 2 A. Yes, I did.
- 3 Q. How about Dr. Karron statements?
- 4 A. Yes, the American Express statements for the CASI business
- 5 account and for one of the accounts for Donald Karron only.
- 6 Q. Did you review any invoices?
- 7 A. Yes, there were some invoices.
- 8 Q. Did CASI have one account or multiple accounts?
- 9 A. There were four CASI business accounts.
- 10 Q. And how did you treat these multiple accounts in your
- 11 analysis?
- 12 A. In my analysis --
- 13 THE COURT: What kind accounts are we talking about?
- 14 THE WITNESS: Checking.
- 15 THE COURT: Checking accounts. There were four
- 16 checking accounts?
- 17 THE WITNESS: Yeah, yeah. There may have been --
- 18 yeah, there were four checking accounts, and then a personal
- 19 account had a savings account and a personal account.
- 20 Q. And how do you treat CASI's multiple business accounts?
- 21 A. I treated them as one bank account.
- 22 Q. And why did you do that?
- 23 A. Because all -- the majority of the deposits were from the
- 24 NIST ATP grant, and there was a lot of transfers between the
- 25 accounts.

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- 1 Q. Now, in terms of the information that you relied on, how
- does this analysis differ or the same from your, the materials
- 3 you relied on in your audit reports?
- 4 A. The audit report I relied on the whatever books and records
- 5 or ledgers that were provided by CASI. For the analysis of the
- 6 checking account, I was relying just on the checks.
- 7 Q. Ms. Riley, I'm showing you -- in, front of you the box
- 8 marked already in evidence as government exhibit 80.
- 9 THE COURT: I'm confused, Mr. Kwok. If we used the
- 10 exhibit numbers, I'd be much happier, but when you fail to use
- 11 the exhibit numbers I think it's confusing and not clear to the
- jury what the witness is talking about.
- 13 MR. KWOK: I will use the exhibit number. I
- 14 apologize, your Honor.
- 15 THE COURT: All right.
- 16 Q. I'm directing your attention, Ms. Riley, to exhibit 80,
- 17 which is the box in front of you, if you could stand up?
- 18 THE COURT: Exhibit 80 isn't admitted in evidence.
- 19 MR. KWOK: It's by stipulation, your Honor.
- 20 THE COURT: Oh, all right.
- 21 A. Okay. Yes.
- 22 THE COURT: And what does exhibit 80 consist of so
- 23 that you don't -- we know what we're talking about?
- 24 THE DEPUTY CLERK: Move those folders.
- 25 BY MR. KWOK:

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- 1 Q. Ms. Riley, what is exhibit 80?
- 2 A. 80 -- exhibit 80 is Dr. Karron's personal checking accounts
- 3 and savings account.
- 4 Q. How about government exhibit 81?
- 5 A. 81 is the business checking accounts, the four business
- 6 checking accounts.
- 7 THE COURT: Four checking?
- 8 THE WITNESS: Yes, sir. It's through -- there is a
- 9 CASI business account, and then there's NIST project business
- 10 account, and then there's a CASI corporation -- CASI has
- 11 changed its -- become an LLC Corporation, and there's, so
- there's also a NIST LLC corporation account.
- 13 Q. So, and what is government --
- 14 A. They were just changing different entities.
- Q. And what is government exhibit 90, 90?
- 16 A. 90?
- 17 Q. It's to your right?
- 18 THE COURT: Just so I'm clear, in 81 there are four,
- 19 those four accounts were in 81, am I right, Ms. Riley?
- THE WITNESS: I'm sorry, what?
- 21 THE COURT: The four accounts that you just mentioned
- 22 the CASI business account, the CASI LLC business account, the
- 23 NIST --
- 24 THE WITNESS: NIST --
- 25 THE COURT: CASI NIST accounts and CASI'S NIST LLC

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- 1 account --
- 2 THE WITNESS: Yes.
- 3 THE COURT: -- are all part of exhibit 81, is that
- 4 correct?
- 5 THE WITNESS: Yes, yes.
- 6 THE COURT: All right.
- 7 THE WITNESS: Okay.
- 8 Q. Now turning to exhibit 90 already in evidence, what is
- 9 that?
- 10 A. This is the American Express statements for the CASI
- 11 accounts.
- 12 THE COURT: It's a what?
- 13 THE WITNESS: American Express account.
- 14 THE COURT: In the name of?
- 15 THE WITNESS: It's -- there are various American
- 16 Express accounts and --
- 17 THE COURT: In whose name?
- 18 THE WITNESS: The Computer Aided Surgery, and Dr --
- 19 there's one in D. B. Karron.
- 20 THE COURT: Dr. Karron?
- 21 THE WITNESS: Yes.
- 22 THE COURT: That's two.
- THE WITNESS: Oh, they're the same. They're --
- they're various account numbers with the same name.
- 25 THE COURT: They're various --

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1 THE WITNESS: Doctor D. B Karron Computer Aided

- 2 Surgery, there is an account number three --
- 3 THE COURT: I couldn't understand you.
- 4 THE WITNESS: Doctor D. B. Karron Computer Aided
- 5 surgery, there's an account number 37834901721500, and also
- 6 account 378349017217006.
- 7 THE COURT: And in whose name is that?
- 8 THE WITNESS: Doctor D. B. Karron, Computer Aided
- 9 Surgery.
- 10 THE COURT: Any other accounts in the American
- 11 Express.
- 12 THE WITNESS: Yes.
- THE COURT: Exhibit 90?
- 14 THE WITNESS: Also for Dr. D.B. Karron --
- THE COURT: I'm sorry?
- 16 THE WITNESS: Another one under that same name is
- 17 378349017216008.
- 18 THE COURT: In the name of?
- 19 THE WITNESS: Dr. D.B. Karron, Computer Aided Surgery.
- 20 THE COURT: Any others?
- 21 THE WITNESS: There is also under Dr. D.B. Karron
- 22 Computer Aided Surgery 378349017218004.
- THE COURT: Any others?
- 24 THE WITNESS: These two --
- 25 THE COURT: I'm sorry?

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1 THE WITNESS: This, these -- also in this there are

- 2 sections that are for other people like for Lee Gurfein where
- 3 it's not --
- 4 THE COURT: Tell us which ones you reviewed.
- 5 THE WITNESS: Okay. So then also there's a personal
- 6 Dr. D.B. Karron for 371543567491006, and one for Dr. D.B.
- 7 Karron 372893053176002.
- 8 THE COURT: And what about the ones for the other
- 9 people you say are part of 90?
- 10 THE WITNESS: They're in -- let's see. They're in
- 11 part of the statement.
- 12 THE COURT: I'm sorry?
- 13 THE WITNESS: They're like the one, like account
- 14 number Dr. D.B. Karron.
- 15 THE COURT: We can't remember those numbers so you
- have to tell us what you're doing.
- 17 THE WITNESS: Okay. So included in some of the
- 18 accounts there's a, for Dr. D.B. Karron, Alicia Gurfein and
- 19 Charles Desala, credit cards under the account number or the
- 20 main account number.
- 21 THE COURT: You mean were separate credit cards issued
- 22 under the --
- 23 THE WITNESS: Under the same billing account number
- 24 they had -- yeah, they had three -- this one credit card
- account number had three separate credit cards that appeared on

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1 that bill for that account number, so it's associated with.

- 2 THE COURT: I see. Who are they attributed to?
- 3 THE WITNESS: Alicia Gerfein and Charles Desala.
- 4 Q. Ms. Riley --
- 5 MR. KWOK: Sorry, your Honor.
- 6 THE COURT: Anything else?
- 7 Q. Yes. Ms. Riley, now I'm showing you government Exhibit
- 8 100. Do you recognize what that is, already in evidence?
- 9 A. Yes. It's invoices from Datavisioin.
- 10 Q. How about government Exhibit 101?
- 11 THE COURT: What are invoices from data bases?
- 12 THE WITNESS: Invoices from Datavisioin is a --
- 13 THE COURT: Datavision.
- 14 THE WITNESS: It's a computer company.
- 15 THE COURT: All right. Supplier of some sort?
- 16 THE WITNESS: Yes, equipment supply, equipment person.
- 17 THE COURT: All right.
- 18 Q. Government Exhibit 101, do you have that document in front
- 19 of you?
- 20 A. Yes.
- 21 Q. Do you recognize it?
- 22 A. It's invoices from Homefront Hardware.
- Q. Are those invoices as well?
- 24 A. Yes.
- Q. How about government Exhibit 102 already in evidence?

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1 A. 102, invoices from General Computer Service.

- 2 Q. Government exhibit 103 already in evidence?
- 3 A. Invoices from Silicon Graphics Incorporated.
- 4 Q. Government Exhibit 104?
- 5 A. Invoices from Silicon City.
- 6 Q. Now, Ms. Riley, before I showed you those documents, had
- 7 you looked at those documents before?
- 8 A. Yes.
- 9 Q. And what did you do with those documents?
- 10 A. I reviewed the things on the documents and traced them back
- 11 to the source records. I also initialed and dated that I had
- 12 seen them.
- 13 Q. Did you summarize the information in the bank records, the
- 14 American Express card statements and the invoices, in a summary
- 15 document?
- 16 A. Yes, they're summarized in my review of the checks and bank
- 17 statements.
- 18 Q. I'm showing next what's been marked for identification as
- 19 government Exhibit 110?
- 20 A. 110.
- 21 THE COURT: Okay.
- Q. Do you recognize what that is?
- 23 A. Yes.
- Q. Who prepared that document?
- 25 A. I did.

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- 1 Q. What is the summary of?
- 2 A. It's a summary of the bank, analysis of the bank statements
- 3 and checks.
- 4 O. Of?
- 5 A. Of CASI, and the four bank accounts of CASI.
- 6 MR. KWOK: Government offers government Exhibit 110?
- 7 MR. RUBINSTEIN: No objection, your Honor.
- 8 THE COURT: Let me just see. I want to know exactly
- 9 what it is. 110 is the summary of which exhibits, the 70 --
- 10 does it also include credit cards?
- 11 THE WITNESS: Yes, sir, it does.
- 12 THE COURT: So it's 70 and 80. And what about -- and
- 13 81, is that right?
- 14 THE WITNESS: The credit cards are 90, and the checks
- 15 were 81 -- the checks were 81, right. Checks are 81. So it
- includes 90, the American, the American Express bills and 81,
- 17 the checks from the four bank accounts.
- THE COURT: 90 you mean?
- 19 THE WITNESS: Yeah.
- THE COURT: What?
- 21 THE WITNESS: No.
- THE COURT: Includes 90?
- THE WITNESS: 90 is, what is 90? Oh, yes, the
- 24 American Express -- yes, the American Express bill is 90, 90
- 25 and 81.

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- 1 THE COURT: Just 90 and 81, not 70, not 80.
- THE WITNESS: 70 is --
- 3 O. If I can ask the next question, I think it would clear it
- 4 up.
- 5 Ms. Riley, did you prepare a separate summary for the
- 6 information contained in government exhibit 80?
- 7 A. Yeah, the separate, 80 --
- 8 Q. What is government exhibit 80?
- 9 A. Oh, yes, I did. Dr. Karron's checks has a separate
- 10 summary.
- 11 THE COURT: All right. 80 is a separate one. What is
- in this one, 110; what is included in 110?
- MR. KWOK: Let me ask the witness.
- 14 THE COURT: That's what I'm asking the witness.
- 15 Q. Ms. Riley, does government exhibit 110 include government
- 16 exhibit 81, government exhibit which is the CASI bank account
- 17 statement, and government exhibit 90, which are the American
- 18 Express card statements?
- 19 A. Yes.
- 20 Q. And does what is marked for identification as government
- 21 exhibit 111, include a summary of government exhibit 80, which
- is the Chase Bank account statements for Dr. Karron,
- 23 personally?
- 24 A. Yes, plus it also includes the personal credit card
- 25 statements that were included in 90 American Express.

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1 MR. KWOK: Government offers --

- 2 THE COURT: I'm absolutely confused as to what it
- 3 covers. I don't follow what she's covering in each of these
- 4 exhibits.
- 5 THE WITNESS: Okay.
- 6 THE COURT: She doesn't seem to make it clear.
- 7 THE WITNESS: Okay.
- 8 THE COURT: 90 is included in both, apparently.
- 9 Q. Ms. Riley, why is government exhibit 90 included in both
- 10 summaries?
- 11 A. Government exhibit 90 has business credit cards and it's
- 12 statements, and it also has a couple of personal credit card
- 13 statements. So the business credit card statements are
- 14 included, along with exhibit 81, the business checks and
- 15 analyzed, and the personal credit card statements in 90 are
- 16 included with the personal bank account checks for Dr. Karron
- 17 and in Exhibit 110, 111 -- 111.
- 18 THE COURT: So is the stipulation you're making
- 19 between Exhibit 110 and 111 is that one is for personal records
- of Dr. Karron and the other is for the business records of --
- 21 that or business accounts of CASI?
- THE WITNESS: Yes, sir; yes, sir.
- 23 THE COURT: Which Dr. Karron may have had drawing
- 24 power over as a --
- 25 THE WITNESS: Right.

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- 1 THE COURT: -- an executive of CASI?
- THE WITNESS: Yes, he did have drawing power as an
- 3 executive of CASI.
- 4 THE COURT: So which is which, the personal -- Dr.
- 5 Karron, personally, is 110?
- 6 THE WITNESS: Right.
- 7 THE COURT: And CASI and Dr. Karron business wise is
- 8 111; is that right?
- 9 THE WITNESS: No, Dr. Karron personal is 111, because
- 10 on the personal --
- 11 THE COURT: All right.
- 12 Q. Ms. Riley, just to be clear, government Exhibit 111, isn't
- that Dr. Karron's -- summary of Dr. Karron's personal expenses
- 14 as reflected in the American Express card statements and his
- 15 personal Chase Bank statements?
- 16 A. Yes.
- Q. And just to be clear, is government Exhibit 110 a summary
- 18 of the business expenses as reflected in the Chase Bank
- 19 statements and the bank expenses -- CASI's expenses as
- 20 reflected in the American Express credit card statements.
- 21 A. Yes.
- 22 MR. KWOK: Government offers 110 and 111.
- 23 THE COURT: 110 and 111 are admitted without
- 24 objection.
- 25 (Government's Exhibits 110 and 111 received in

SOUTHERN DISTRICT REPORTERS, P.C.

865zkarl Riley - direct

- 1 evidence)
- Q. Now, Ms. Riley -- Ms. Moussa, if we could put up government
- 3 Exhibit 110 on the screen, which is the summary for CASI
- 4 expenses. If we could zoom in on the top half of the page.
- 5 Ms. Riley, could you tell us what the column headings
- of your data base indicate?
- 7 A. Okay. The first one the ID is just a number assigned by
- 8 the computer. The description is the payee of the check. It
- 9 was electronic funds transfer, the information from the bank
- 10 statement concerning the payee. The date is from the date
- 11 that -- the date on the bank statement that the check was
- 12 cleared. The -- and the total of the, of the check. The check
- 13 memo entries are from, are from -- if there was a check memo on
- 14 the account, and for some of the accounts if I -- I may have
- 15 gone back to one of the ledgers from the previous audit to get
- 16 a check, an entry there. But it normally says per ledger if it
- 17 didn't come from the check.
- 18 THE COURT: I'm sorry, what exhibit is that from? I'm
- 19 a step behind you all.
- 20 MR. KWOK: What is on the screen, your Honor, is
- 21 government exhibit 110.
- 22 THE COURT: And this is not the first page, it's -- oh
- 23 it is the first page.
- 24 THE WITNESS: It is the first page.
- THE COURT: But it's cut off, is that the problem?

SOUTHERN DISTRICT REPORTERS, P.C.

865zkar1 Riley - direct

1 THE DEPUTY CLERK: They blew up a section of it.

- 2 THE COURT: You can't -- you're not -- you haven't got
- 3 the whole page on there, because it says bank transfer, right?
- 4 MR. KWOK: That's correct.
- 5 THE WITNESS: Yes.
- 6 THE COURT: All right. Okay.
- 7 MR. KWOK: Ms. Moussa, if we could put up what is
- 8 already in evidence, pages from government exhibit 81, which is
- 9 the CASI bank statements. If we could zoom in on the top
- 10 check. May I approach, your Honor?
- 11 THE COURT: This is part of what, 80?
- 12 MR. KWOK: This is exhibit 81. It's not in the jury
- 13 binders because it's part of voluminous bank records, but it is
- on the screen.
- 15 THE COURT: All right.
- 16 MR. RUBINSTEIN: Could I just ask one question, your
- 17 Honor?
- 18 THE COURT: What for? You mean voir dire of some
- 19 sort?
- MR. RUBINSTEIN: Yes.
- MR. KWOK: It's already in evidence.
- 22 THE COURT: It's a little late.
- 23 MR. RUBINSTEIN: Could I ask one question, Judge? It
- 24 may help later on.
- THE COURT: Maybe I'll ask it. Why don't you come up.

SOUTHERN DISTRICT REPORTERS, P.C.

	865zkar1	Riley - direct
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Riley - direct 865zkar1 1 (At the sidebar) 2 MR. RUBINSTEIN: Each one of these accounts that she 3 mentioned has a different color check. Showing it up here is in black and white. I just want to ask her what color check it is so the jury will know. That way they'll know what account 5 it comes from. 6 THE COURT: Whether she knows what color check? 7 8 MR. RUBINSTEIN: She has the original. 9 MR. KWOK: We don't -- your accountant did --THE COURT: What? 10 11 MR. KWOK: That's the way it's provided to us by the bank. It's in evidence in black and white. 12 13 MR. RUBINSTEIN: Okay, all right. 14 (Continued on next page) 15 16 17 18 19 20

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8657KAR2 Riley - direct

- 1 BY MR. KWOK:
- Q. Ms. Riley, do you recognize the documents that are being
- 3 displayed on the screen there?
- 4 A. Yes.
- 5 Q. What are they?
- 6 A. They are checks from the Computer Aided Surgery checking
- 7 account.
- 8 Q. Who is the payee?
- 9 A. Dr. D.B. Karron.
- 10 Q. For how much?
- 11 A. \$2,000.
- 12 THE COURT: Which check are you talking about?
- 13 Q. Can you tell us the check number?
- 14 A. The top check, 2977.
- Q. What does it say on the memo line?
- 16 A. Rental office, 300 East 33rd Street, Suite 4N.
- 17 O. How about the handwritten notation?
- 18 A. January 2000 rent.
- MR. RUBINSTEIN: Excuse me?
- THE WITNESS: January 2000 rent.
- 21 Q. Can you tell me how that information is reflected on your
- database, Government Exhibit 110.
- 23 A. Exhibit 110, on page 39 of 44. Exhibit 110, page 39 of 44.
- MR. KWOK: If we could zoom in on the bottom portion
- of the page.

8657KAR2 Riley - direct

- 1 Q. Could you tell us how the information we just looked at on
- 2 the check is reflected here?
- 3 A. OK. It's under rent on office. Under the description it
- 4 has in parens it's got Dr. Karron, and the other thing is his
- 5 bank account number that the check was deposited into, his
- 6 personal account. It showed that there was a transfer into his
- 7 checking account. And the date of the transaction was
- 8 10/26/2001.
- 9 Q. Is that the same or different from the check we just looked
- 10 at?
- 11 A. It's the same.
- 12 Q. What is the check number reflected on the database?
- 13 A. 2977.
- 14 Q. Is that the same check number as we just looked at?
- 15 A. Yes. And the memo is rent on office per general ledger,
- from the check memo, and it's \$2,000. It's the amount for
- 17 check number 2977.
- 18 Q. Now, I'm showing you another page from Government Exhibit
- 19 81 which is the CASI bank statement. Do you recognize this
- 20 check?
- 21 A. Yes, it's from the CASI/NIST checking account.
- 0. What is the check number there?
- 23 A. 10325.
- Q. And who is the payee?
- 25 A. D. Ferrand.

8657KAR2 Riley - direct

- 1 Q. And do you see a signature there?
- 2 A. Yes, it's Dr. Karron.
- 3 Q. Could you explain to us how this information is reflected
- 4 on your database.
- If we could go back to the database, please.
- THE COURT: What is the amount of the check?
- 7 Q. What is the amount of the check?
- 8 A. \$100. OK. This is on --
- 9 Q. Could you direct us to the page of the database where that
- 10 check is reflected?
- 11 A. The check number was 10325 on page 37 of 44 on Exhibit 110.
- MR. KWOK: Can we zoom in?
- 13 MR. RUBINSTEIN: We're still on 110, are we?
- 14 THE WITNESS: Yes, Exhibit 110, page 37 of 44.
- 15 Q. Where should we be looking?
- 16 A. In the middle of the page. If you look, the check number
- 17 it's 10325, so if you look under the check number column it's
- down under -- yeah -- you see the notation.
- 19 THE COURT: I'm sorry. She should be doing the
- 20 pointing out to what she is testifying. It shouldn't be you,
- 21 Mr. Kwok. All right?
- 22 A. OK. The check number of 10325 for cleaning office charges
- for the week ending 6/22/02 in the amount of \$100. 10325 is
- 24 the check number. It was for cleaning offices. The amount is
- \$100, and the pay payee Steve Korand, that's shown under the SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR2 Riley - direct

- 1 description of the column.
- Q. If we could look at the rest of the page. Under the check
- 3 memo.
- 4 THE COURT: The rest of the page of exhibit -- you are
- 5 making a record, Mr. Kwok. The record has to be clear as to
- 6 what exhibits you are referring to at all times.
- 7 MR. KWOK: I apologize.
- 8 THE COURT: No one can review the record if you don't
- 9 mention the exhibit number at all times.
- 10 MR. KWOK: I am still looking at Government Exhibit
- 11 110. I am still looking at page 37 of 44.
- 12 Q. Now, directing your attention to the top portion of that
- page, what appears under the check memo column?
- 14 A. The check memo is information taken from the memo section
- of the check.
- 16 Q. What does it say on the check memo?
- 17 A. Oh, cleaning.
- 18 Q. And what did you base that information on?
- 19 A. Some of the checks were based on, if they didn't have -- in
- 20 order to identify the check and what the check was for, on some
- 21 of the checks I looked back at the ledgers that I had gotten
- 22 from CASI's audits prepared by either Mel Spitz or for the
- 23 check registers I had gotten from the June audit 2003.
- Q. Ms. Riley, I'm showing you a check from Government Exhibit
- 25 81 already in evidence, which is the bank account statements SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR2 Riley - direct

- 1 for CASI.
- 2 Can we put one by one up on the screen?
- 3 What information is reflected -- what check number is
- 4 that, first of all?
- 5 A. 10330.
- 6 Q. And what information is next to the memo line of the check?
- 7 MR. RUBINSTEIN: Sorry. I missed the check number.
- 8 THE WITNESS: 10330.
- 9 Q. And what information is reflected next to the memo line of
- 10 the check?
- 11 A. Cleaning office charges for the week ending 6/29/2002.
- 12 Q. Look at the next check, still Government Exhibit 81. What
- is the check number on that check?
- 14 A. 10325.
- 15 Q. What is the information reflected next to the memo line?
- 16 A. Cleaning office charges for the week ending 6/22/02.
- 17 Q. And directing your attention to the upper left-hand corner
- of the check, what does that say?
- 19 A. Computer Surgery, Incorporated, NIST ATP DMT Program.
- 20 Q. Let the record reflect these are colored checks.
- 21 A. I think they're colored, aren't they pink?
- 22 THE COURT: Do you know?
- THE WITNESS: Yeah, they're colored.
- Q. And who is the payee on that particular check?
- 25 A. The payee is D. Ferrand.

8657KAR2

Riley - direct

- 1 Q. What's the amount of the check?
- 2 A. \$100.
- 3 O. Let's look at the next and final check, still Government
- 4 Exhibit 81, part of the bank reports. What is the check number
- 5 on this check?
- 6 A. 10509.
- 7 Q. How about the upper left-hand corner of the check, what
- 8 does that say?
- 9 A. Computer Aided Surgery, Inc. NIST ATP DMT program.
- 10 Q. And who is the payee on that check?
- 11 A. D. Ferrand.
- 12 Q. For how much?
- 13 A. \$100.
- 14 Q. And what is the information reflected next to the memo
- 15 line?
- 16 A. Cleaning office charges for the week ending 10/5/2002.
- 17 Q. What's the signature that appears on that check?
- 18 A. D.B. Karron.
- 19 Q. Now, Ms. Riley, a moment ago you mentioned American Express
- 20 card statements.
- 21 A. Yes.
- 22 Q. How is the information on the American Express card
- 23 statements, which is Government Exhibit 90, reflected on your
- 24 database?
- 25 A. The transaction of the credit card is taken from the credit SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR2 Riley - direct

- 1 card invoice, but the transaction for paying the credit card
- was picked up whenever I analyzed the CASI bank statements.
- 3 THE COURT: What?
- 4 THE WITNESS: The payment of the credit card was
- 5 already in the database because I had that information when I
- 6 reviewed the bank statements, the bank statements and canceled
- 7 checks. So the payment was already in the database. I just
- 8 added the transactions, the purchase transactions from the
- 9 credit card.
- 10 THE COURT: You just added the information about who
- 11 the purchaser was?
- 12 THE WITNESS: And the amount and the date of the
- 13 transaction.
- 14 THE COURT: I see. So the total payment for the
- 15 credit card is already in the database?
- 16 THE WITNESS: Yes, sir.
- 17 THE COURT: So, these were just individual --
- 18 THE WITNESS: Yes.
- 19 THE COURT: -- transactions.
- 20 THE WITNESS: Right. And so that it wouldn't show as
- 21 a double payment I handled the credit card, I took the credit
- 22 card payments out of the deposit withdrawal section of the
- database.
- MR. KWOK: May I approach, your Honor?
- Q. Ms. Riley, I just handed you pages from Government Exhibit SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR2 Riley - direct

90, which is the American Express card statements. It's in the

- 2 jury binders. Now, could you show us an example of how some of
- 3 the information in the document that I just handed you is
- 4 reflected on your database, Government Exhibit 110.
- 5 A. OK. If we go to -- does everybody have 90?
- 6 Q. What page are you looking at in your database, Ms. Riley?
- 7 THE COURT: What page of 110 are you looking at? Is
- 8 that what you're asking her?
- 9 MR. KWOK: That's what I'm asking the witness.
- 10 Q. What page of Government Exhibit 110 are you looking at?
- 11 A. Page 24 of 37 of Exhibit 110. Actually --
- 12 MR. KWOK: Your Honor, may I direct the witness's
- 13 attention to a particular page?
- 14 THE COURT: Of 110?
- MR. KWOK: Yes.
- 16 THE COURT: She said 24 of 37.
- 17 Q. Is that the correct page?
- 18 A. I don't think so.
- 19 THE COURT: It depends on what she is comparing it to.
- 20 Q. Let me do it this way. Ms. Riley can I direct your
- 21 attention to page 29 of 44 of your database. Do you have that
- 22 page?
- 23 A. Page 29 of 44? Yes.
- 24 Q. OK.
- 25 THE COURT: Exhibit 110.

SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR2 Riley - direct

- 1 Q. 29 of 44, Exhibit 110, do you have that page?
- 2 A. Oh, you're right, OK. I'm sorry. 29 of 44, yes.
- 3 Q. OK. Let's put your finger on that page, and look back at
- 4 the American Express card statements that I just showed you.
- 5 If we could have that up on the screen, please.
- 6 Government Exhibit 90.
- 7 THE COURT: What are you asking to have put up on the
- 8 screen.
- 9 MR. KWOK: Government Exhibit 90, the statement for
- 10 August 7, 2002.
- 11 THE COURT: First page?
- MR. KWOK: Page 2.
- 13 Q. Now, looking at the screen, Ms. Riley, and if you could use
- 14 your pointer, what transaction is reflected for July 12, 2002?
- 15 A. I misplaced my pointer.
- 16 MR. RUBINSTEIN: Are there numbers on the bottom of
- 17 the page that I can't see? OK. I have my revised.
- 18 Q. OK. Ms. Riley, what transaction is reflected -- what is
- 19 the first transaction for July 12, 2002?
- 20 A. July 12, 2002, the American Express shows a charge to Sam's
- 21 Noodle Shop in the amount of 29.10. On page 29 of 44 --
- 22 Q. Let's go through the American Express card statements
- 23 first. Let's turn to the next page of the American Express
- card statement, Government Exhibit 90, page 3.
- 25 A. OK.

8657KAR2 Riley - direct

Q. What transaction is shown for July 22, 2002?

- 2 A. July 22, 2002 there is a charge to Sam's Noodle Shop for
- 3 23.55.
- 4 Q. And is there a charge reflected on the same page,
- 5 Government Exhibit 90, page 3 of 7, for August 7, 2002 to the
- 6 same vendor?
- 7 THE COURT: What's your question again?
- 8 Q. Directing your attention to July 30, 2002, Ms. Riley.
- 9 A. Oh, yes, on July 30 there is Sam's Noodle Shop for the
- 10 amount of 19.45.
- 11 Q. OK. Now, let's turn back to Government Exhibit 110 that we
- 12 just looked at, page 29 of 44. Can you tell us how the
- information that we just looked at is reflected on your
- 14 database?
- 15 A. It comes through the date column to July.
- 16 MR. RUBINSTEIN: Your Honor, excuse me. Are we on
- 17 page 24 or 29?
- 18 THE WITNESS: 29 of 44.
- MR. RUBINSTEIN: Thank you.
- 20 A. On July 12 there is a transaction to Sam's Noodle Shop in
- 21 the amount of 29.10, and on July 22 there is a transaction to
- 22 Sam's Noodle Shop of 23.55, and on July 30, Sam's Noodle Shop
- 23 in the amount of 19.45.
- 24 THE COURT: So, how was this credit card paid for?
- THE WITNESS: It's paid for out of this account.

SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR2 Riley - direct

- 1 THE COURT: What account?
- 2 THE WITNESS: Out of one of the CASI -- at the CASI
- 3 accounts. This one --
- 4 THE COURT: You told us there are multiple CASI
- 5 accounts.
- 6 THE WITNESS: Right. But in my database they are
- 7 treated as one account, one big account, because the deposits
- 8 come from NIST, from one source.
- 9 THE COURT: The deposits come from where?
- 10 THE WITNESS: From NIST, the ATP grant award. There
- is a lot of interaccount transfers, but for the most part the
- deposits are coming from the grant monies.
- 13 MR. KWOK: If we could put back up on the screen
- 14 Government Exhibit 90, the American Express card statement, the
- 15 August 7, 2002 statement, page 1. If we could zoom into the
- 16 middle portion of that page there highlighted in gray.
- 17 Q. What does this statement show regarding payment to the
- 18 outstanding credit card balance?
- 19 A. It shows on July 14, 1,074.91 was received by American
- 20 Express from CASI, and on July 29 that American Express
- 21 received a payment of \$2,940.01 from CASI.
- 22 Q. And where did the money come from that paid off these
- 23 credit card balances?
- 24 A. From the CASI/NIST bank accounts.
- Q. How do you know that?

8657KAR2

Riley - direct

- 1 A. OK. Those transactions are reflected on page 3 of 44 of
- 2 Exhibit 110.
- 3 O. Are you talking about Government Exhibit 110, Ms. Riley?
- 4 A. Yes, Government Exhibit 110, page 3 of 44.
- 5 Q. And where are you looking?
- 6 A. Kind of the middle of the page, under the payments of the
- 7 credit card.
- 8 THE COURT: Sorry. What was that page again?
- 9 THE WITNESS: 3 of 44.
- 10 Q. Can you point them out on the screen?
- 11 A. Yes. It shows that American Express electronic remittance
- 12 was made from the CASI bank statement account on 7/15 in the
- amount of \$1,074.91 to pay American Express, and that another
- 14 electronic remittance was made from the account on July 31,
- 15 2002 to pay American Express in the amount of \$2,940.01.
- 16 Q. Did you base this information on the Chase credit card
- 17 statements of CASI?
- 18 A. This information came from the bank statements and the
- 19 payment of the bank statements.
- 20 Q. Chase Bank?
- 21 A. Chase Bank.
- 22 Q. I am handing you a few pages from Government Exhibit 81,
- 23 the CASI Chase Bank account statements, which is also in the
- 24 jury binders. Directing your attention to the June 22 to July
- 25 22 statement period, page 3.

8657KAR2 Riley - direct

- 1 MR. RUBINSTEIN: Excuse me. What are those dates?
- 2 MR. KWOK: I'm looking at Government Exhibit 81, the
- 3 Chase statements for CASI, the period from June 22 to July 22,
- 4 page 3 of 4.
- 5 THE COURT: Let the witness point to the area you are
- 6 referring to.
- 7 A. The bank statement shows that on 7/15 there was an American
- 8 Express electronic payment in the amount of 1,074.91 from the
- 9 Chase bank account.
- 10 MR. KWOK: And if you could zoom out for a second.
- 11 Q. Directing your attention to the upper right-hand corner,
- 12 under the primary account number, what is the text that's
- 13 underneath that?
- 14 A. It says Computer Aided Surgery, Incorporated, NIST ATP DMT
- 15 Program.
- 16 Q. And directing your attention now to the same exhibit,
- Government Exhibit 81, but now we are looking at the next
- 18 statement period from July 23 to August 21, 2002, page 3 of 4.
- 19 Do you have that page, Ms. Riley?
- 20 A. Sorry. What page?
- Q. July 23 to August 21, 2002, that period statement?
- 22 THE COURT: Where do I find the date?
- 23 MR. KWOK: It's on the upper right-hand corner of
- every page.
- THE COURT: I see. July what?

SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR2 Riley - direct

- 1 MR. KWOK: July 23 to August 21, 2002, the statement
- 2 for that account period.
- 3 THE COURT: Just one second. So that's six or eight
- 4 pages in.
- 5 MR. KWOK: That's page 3 of 4. It's the page on the
- 6 screen.
- 7 THE COURT: July 23, page --
- 8 MR. KWOK: It's actually page 10 on the bottom of the
- 9 page.
- 10 THE COURT: Page 10 at the bottom right-hand corner?
- MR. KWOK: Of the page, yes.
- 12 THE COURT: Of that statement.
- MR. KWOK: Of that statement, correct.
- 14 Q. Do you have that page, Ms. Riley?
- 15 A. Yes.
- 16 Q. Directing your attention to the withdrawal and debits
- portion of that page, what are you pointing at, Ms. Riley?
- 18 A. This shows the payment on 7/31, the electronic remittance
- 19 to American Express of \$2,940.01. That corresponds to the
- 20 amount that we just looked at on the American Express
- 21 statement.
- 22 Q. So, is that the same or different number than the one we
- 23 just looked at in the American Express card statement
- 24 Government Exhibit 90?
- 25 A. It's the same number.

8657KAR2 Riley - direct

- 1 THE COURT: Same account number.
- THE WITNESS: The payment.
- 3 THE COURT: Same --
- 4 THE WITNESS: -- payment.
- 5 Q. When you say same number, what number are you referring to?
- 6 A. The same payment, the July 29 on the American Express bill
- 7 shows that they received \$2,940.01 from CASI, and the bank
- 8 statement electronic remittance shows that this bank account
- 9 paid \$2,940.01 to American Express.
- 10 THE COURT: All right.
- 11 Q. Now, Ms. Riley, other than summarizing information on your
- 12 databases, what else did you do in your analysis of the bank
- 13 records?
- 14 A. Created charts and graphs.
- 15 Q. I am showing you what's been marked for identification as
- 16 Government Exhibit 112 and 113. They are not yet in evidence
- 17 but marked for identification. Do you have that in front of
- 18 you, Ms. Riley?
- 19 A. Yes, I do.
- 20 Q. Do you recognize what they are?
- 21 A. Yes.
- 22 Q. And what are they?
- 23 A. They are pie charts that I created from the bank statements
- of CASI.
- Q. How did you create these graphs?

8657KAR2

Riley - direct

- 1 A. I used the information that was in Exhibit 110, the bank
- 2 records, to create these graphs.
- 3 MR. KWOK: The government offers Exhibit 112 and 113.
- 4 THE COURT: No objection?
- 5 MR. RUBINSTEIN: No objection, your Honor.
- 6 THE COURT: 112 and 113 are admitted into evidence.
- 7 (Government's Exhibits 112 and 113 received in
- 8 evidence)
- 9 Q. Now, let's take them one at a time, Ms. Riley. Let's go
- 10 first to Government Exhibit 112. What graph is that of?
- 11 A. This is a graph of the deposits into the CASI bank accounts
- 12 for the period 10/1/2001 through 9/30/2002 which is the first
- 13 year of the grant award.
- 14 Q. And what does the purple area represent?
- 15 A. It represents the deposits into the account for the NIST --
- 16 for the grant money.
- Q. Was there any other source of funding that's not from the
- 18 ATP grant?
- 19 A. There were a couple of minor deposits, but they were really
- 20 credit, refunds to other accounts, so they were used as
- offsets, not as deposits. They were refund checks.
- Q. Now, let's go through Government Exhibit 113. Ms. Riley,
- 23 what is this a graph of?
- 24 A. The CASI business account -- deposits into the CASI
- business accounts for the period 10/1/2002 through 6/30/2003,

8657KAR2 Riley - direct

1 which is the nine months of the second year of the award.

- Q. What does the purple area of the graph represent?
- 3 A. Deposits of grant monies received by CASI.
- 4 Q. And how about that line that's breaking up the circle?
- 5 A. This is miscellaneous other deposits into the account.
- 6 Q. Ms. Riley, did you prepare any additional graphs aside from
- 7 these ones that we just looked at?
- 8 A. Yes.
- 9 Q. What did you prepare?
- 10 THE COURT: What was the amount of those other
- 11 deposits into the account?
- THE WITNESS: The deposits from NIST were \$545,000,
- and the miscellaneous deposits were like 1200, 1500, something
- 14 really small.
- 15 THE COURT: Sorry.
- 16 Q. Ms. Riley, aside from these graphs, did you create any
- 17 additional charts and graphs?
- 18 A. Yes.
- 19 Q. What did you prepare?
- 20 A. I analyzed the expenditures from the accounts.
- 21 Q. I am showing you what have been marked for identification
- 22 as Government's Exhibits 114 and 115. Do you have those in
- 23 front of you?
- 24 A. Yes.
- Q. Do you recognize what they are?

8657KAR2 Riley - direct

- 1 A. Yes, they are the pie charts that I created for the
- 2 analysis of the expenditures.
- 3 Q. And what documents did you look at to create these graphs
- 4 and charts?
- 5 A. Canceled checks and American Express statements were the
- 6 main source documents used to create these.
- 7 MR. KWOK: Government offers Government's Exhibits 114
- 8 and 115.
- 9 MR. RUBINSTEIN: No objection, your Honor.
- 10 THE COURT: 114 and 115 are admitted into evidence.
- 11 (Government's Exhibits 114 and 115 received in
- 12 evidence)
- 13 MR. KWOK: May we publish that to the jury?
- 14 THE COURT: You say these are expenditures?
- 15 THE WITNESS: Yes, sir. For 114 and 115 I did
- 16 analysis and expenditures.
- 17 THE COURT: First for the year ended October 10, 2002?
- 18 THE WITNESS: OK. And that is because of the
- 19 breakdown for the fringe benefits for check paid to IRS for
- 20 withholdings or whatever, the breakdown I had for check and
- 21 fringe benefits, I had an analysis for the year prepared by one
- 22 of the accountants that I could reconcile the numbers -- the
- 23 check payments through October 10. So, it doesn't --
- 24 THE COURT: 114 and 115 are admitted in evidence.
- Q. Now, Ms. Riley looking first at Government Exhibit 114,

8657KAR2 Riley - direct

- what is the pie chart at the upper left-hand corner?
- 2 A. The upper left-hand corner pie chart is just a breakdown of
- 3 the budget, the NIST budget, grant budget to CASI, and it has
- 4 the budget categories by amount.
- 5 THE COURT: Which budget?
- 6 THE WITNESS: For the year one CASI/NIST ATP budget.
- 7 THE COURT: Approved the first one or the subsequent?
- 8 THE WITNESS: Amendment to approved budget.
- 9 Q. So, staying with that graph for a second, just walk us
- 10 through an example, for example, what subcontractor shows.
- 11 A. Subcontractor shows that the NIST-approved budget had a
- 12 budget of \$250,000 for subcontractor costs for year one for the
- 13 NIST ATP grant award.
- 14 Q. How about, for example, Dr. Karron's salary, according to
- 15 the approved budget?
- 16 A. The approved budget had allowed -- Dr. Karron's salary for
- the approved budget was \$175,000.
- 18 MR. KWOK: OK. Now let's zoom back out. Let's turn
- 19 to the upper right-hand corner of the chart. If we could zoom
- 20 that in.
- Q. What is this chart?
- 22 A. This chart shows according to the checks. The checks are
- 23 the American Express transactions from the CASI business
- 24 account. This is a breakdown by the budget categories of how
- 25 the checks were written.

8657KAR2 Riley - direct

- 1 Q. OK. And what is the yellow area of that chart?
- 2 A. The yellow area for the most part is what is limited by the
- 3 budget category. If it was spent over budget, then there is a
- 4 portion that's red and a portion that's yellow. It's costs
- 5 that are allocable to those budget categories in the analysis
- of checks and American Express transactions. Like for the --
- 7 Q. And what does the red area of the graph represent?
- 8 A. The red area represents costs that were over budgets, that
- 9 were considered indirect costs and nonallowable, like dues and
- 10 subscriptions, lawyers, and the rent paid to Dr. Karron, was
- 11 not allowable per the budget.
- 12 MR. KWOK: Let's zoom it back out. Let's turn to the
- 13 bottom right-hand corner of the page.
- 0. What is that the chart of?
- 15 A. There is a 10 percent budget category adjustment that's
- 16 allowed by NIST ATP.
- 17 Q. What is a 10 percent adjustment? Can you explain that?
- 18 A. 10 percent of the budget amount can be reallocated from say
- 19 subcontractor costs to personnel expense, if you have less
- 20 subcontractor costs than you thought.
- So, this is to show that \$83,000 which could be
- 22 reallocated between the budget category if that's the only
- 23 thing that made something unallowable, but it was over budget.
- Q. According to this chart, what is the total of disallowable
- amount for year one of the grant period?

8657KAR2

Riley - direct

- 1 A. This one shows \$268,638.
- Q. Let's zoom it back out, and let's focus on the table for
- 3 now. What does the table show?
- 4 A. The table shows the budget categories compared to the
- 5 amount of money spent by CASI, and the difference between what
- 6 CASI spent and what the budget allowed to be spent, and then it
- 7 shows the percentage difference.
- 8 Q. Can you walk us through an example of that.
- 9 A. Well, for like Dr. Karron's salary the budget was \$175,000,
- 10 CASI spent \$200,000 for year one, a difference of \$25,488, for
- 11 a difference of 14.56 percent over.
- 12 Q. OK. Let's zoom it back out. Let's go back to the upper
- 13 right-hand corner portion of the page, the pie chart with the
- 14 red. Does this chart take into account the lack of any cost
- share that you testified about yesterday?
- 16 A. No, it doesn't have cost share.
- 17 Q. What would this chart have looked like if that information
- 18 had been reflected on the chart?
- 19 A. Some of the red numbers might be yellow if some of the cost
- 20 share had been reflected.
- 21 Q. I'm sorry. Let me rephrase. If you had included in your
- 22 chart the absence of any cost share that you testified about
- 23 yesterday, what would this chart look like?
- 24 A. If I took into consideration that there was no cost share,
- 25 none of the cost would be allowable, and all other costs would SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR2

Riley - direct

- 1 be red.
- 2 Q. Let's go to Government Exhibit 115. What is this a chart
- 3 of?
- 4 A. This is a chart of the same type information for year two
- of the award, the nine months of year two.
- 6 Q. Let's go to the first graph, the upper left-hand corner.
- 7 Again, what information is reflected on this chart?
- 8 A. This is the expenditures by budget category in the NIST
- 9 budget award.
- 10 Q. So, using subcontractor as an example, what is budgeted for
- 11 year two?
- 12 A. \$110,000.
- 13 Q. Let's go to the full page, to the upper right-hand corner.
- 14 And once again, what is this a chart of for year two?
- 15 A. This is the expenditures from the CASI NIST accounts broken
- 16 down by budget category, from the check accounts and the
- 17 American Express accounts.
- 18 Q. What is represented by the red portion?
- 19 A. The red portion would be costs that would be over the
- 20 budget category or maybe not allowable because they are
- 21 indirect costs.
- Q. What are some of those examples?
- 23 A. The equipment cost over budget here of \$90,169, supply
- costs over budget of \$8,800.
- Q. Let's zoom it back out and look at the chart to the bottom SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR2 Riley - direct

1 right. What is the total disallowed expense that you found for

- 2 year two?
- 3 A. According to this analysis, it would be \$196,504.
- 4 Q. Once again, what is that little portion that's a little off
- 5 to the side?
- 6 A. It's allowed, the 10 percent rule that you can allow,
- 7 allowing for 10 percent adjustment to the budget categories,
- 8 there would still be -- there would only be 50,000 of the
- 9 196,000 that would be OK.
- 10 THE COURT: So with the adjustment it would be
- 11 \$146,017.
- 12 THE WITNESS: Right.
- 13 Q. Now, Ms. Riley, let's go to what's been marked for --
- 14 actually what is already in evidence as Government Exhibit 101.
- Do you have that document in front of you?
- 16 A. 101?
- 17 Q. That's correct.
- 18 MR. KWOK: It's Government Exhibit 101, your Honor.
- 19 Q. Do you have that document?
- 20 A. Yes.
- 21 Q. Do you recognize it?
- 22 A. Yes, it's the Homefront Hardware invoice.
- 23 Q. And did you analyze this document in the course of your
- 24 analysis?
- 25 A. Yes.

8657KAR2 Riley - direct

1 Q. Were you able to determine how the balances reflected on

- these invoices were paid for?
- 3 A. Yes. They were paid for from the CASI/NIST bank account,
- 4 or American Express or except for one transaction for \$301 that
- 5 was paid from Dr. Karron's personal credit card account.
- 6 Q. Aside from that, were there any invoices paid for from Dr.
- 7 Karron's personal account?
- 8 A. Yes, one for \$301.
- 9 Q. Aside from that, is there anything else?
- 10 A. No, the rest of them were paid for from the CASI/NIST
- 11 account.
- 12 Q. And how were you able to make that determination?
- 13 A. I traced the payment back to my database of check payments,
- 14 back to the bank statements, to the canceled checks, or to the
- 15 American Express statement that paid them.
- MR. KWOK: Your Honor, at this time the government
- would like to read into the record another stipulation marked
- 18 for identification as Government Exhibit 901.
- 19 THE COURT: Yes.
- 20 MR. KWOK: United States of America v. Daniel B.
- 21 Karron, defendant, S1 07 Crim. 541.
- 22 "It is hereby stipulated and agreed by and among the
- 23 United States of America, by Michael J. Garcia, the United
- 24 States attorney for the Southern District of New York, Steve
- 25 Kwok and Christian Everdell, assistant United States attorneys,

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- of counsel, and defendant Daniel B. Karron, by and with the
- consent of his attorney, Ronald Rubinstein, Esq. that:
- 3 "1. The document marked for identification as
- 4 Government Exhibit 120 is an inventory of items seized on or
- 5 about June 26, 2007 from 300 East 33rd Street, Apartment 4N,
- 6 New York, New York, pursuant to a seizure warrant issued by the
- 7 Honorable Douglas F. Eaton, United States magistrate judge of
- 8 the Southern District of New York.
- 9 "2. The item marked for identification as Government
- 10 Exhibit 112 corresponds to item 79, GPS system, identified in
- 11 Government Exhibit 120.
- 12 "3. The item marked for identification as Government
- 13 Exhibit 122 corresponds to item 20, Sony Cybershot camera
- DSC-F707, identified in Government Exhibit 120.
- 15 "4. The item marked for identification as Government
- 16 Exhibit 123 corresponds to item 23, Infocus LCD projector with
- mount, identified in Government Exhibit 120.
- 18 "5. The item marked for identification as Government
- 19 Exhibit 124 corresponds to item 18, projector screen,
- 20 identified in Government Exhibit 120.
- 21 "6. The item marked for identification as Government
- 22 Exhibit 125 corresponds to item 75, shoe rack, identified in
- 23 Government Exhibit 120.
- 24 "7. The item marked for identification as Government
- 25 Exhibit 126 corresponds to item 37, Kitchen Classics blender by SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 Waring, identified in Government Exhibit 120.
- 2 "8. The item marked for identification as Government
- 3 Exhibit 127 corresponds to item 46, Large STABILA bubble level,
- 4 identified in Government Exhibit 120.
- 5 "9. The item marked for identification as Government
- 6 Exhibit 128 corresponds to item 36, Dust Buster, identified in
- 7 Government Exhibit 120.
- 8 "10. The item marked for identification as Government
- 9 Exhibit 129 corresponds to item 82, folding ladder, identified
- in Government Exhibit 120.
- 11 "11. The item marked for identification as Government
- 12 Exhibit 130 corresponds to item 41, Porter cable rechargeable
- tool set, identified in Government Exhibit 120.
- 14 "12. The item marked for identification as Government
- 15 Exhibit 131 corresponds to items 38 and 39, Porter cable Tiger
- 16 Saw quickcharge and two batteries and charger for item 38,
- identified in Government Exhibit 120.
- 18 "13. The items marked for identification as
- 19 Government Exhibit 132 correspond to items 42 and 74, set of
- 20 three rechargeable flashlights with chargers, and set of two
- 21 rechargeable flashlights with chargers, identified in
- 22 Government Exhibit 120.
- 23 "It is further stipulated and agreed that Government
- 24 Exhibits 120 and 121, 122, 123, 124, 125, 126, 127, 128, 129,
- 25 130, 131, 132 may be received in evidence as Government's

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- 1 Exhibits at trial."
- Signed and dated, signed on behalf of the United
- 3 States by Steve Kwok, and on behalf of Daniel B. Karron by
- 4 Ronald Rubinstein, Esquire.
- 5 MR. RUBINSTEIN: What was that exhibit, sir?
- 6 MR. KWOK: It's marked for identification as
- 7 Government Exhibit 901.
- 8 THE COURT: That's the stipulation number?
- 9 MR. KWOK: That's correct, your Honor.
- 10 THE COURT: Well, I will have to have the stipulation,
- 11 a copy of the stipulation, to read off the exhibits.
- 12 Oh, I see it.
- 13 All right. Exhibits 120, 121, 122, 123, 124, 125,
- 14 126, 127, 128, 129, 130, 131 and 132 are received in evidence.
- 15 And Exhibit 901 is received in evidence.
- 16 (Government's Exhibits 120, 121, 122, 123, 124 and 125
- 17 received in evidence)
- 18 (Government's Exhibits 126, 127, 128, 129, 130, 131
- 19 and 132 received in evidence)
- 20 (Government's Exhibit 901 received in evidence)
- 21 MR. KWOK: Your Honor, may we publish these items to
- the jury?
- THE COURT: Yes, you may.
- MR. KWOK: Your Honor, may I go through the items one
- by one, just read off the exhibit number?

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- 1 THE COURT: Yes, you may.
- 2 MR. KWOK: Government Exhibit 120, Government Exhibit
- 3 122.
- 4 MR. RUBINSTEIN: Can I see that when you hold it up,
- 5 please, Mr. Kwok?
- 6 MR. KWOK: Government Exhibit 123. Government Exhibit
- 7 124 is the screen on the floor. Government Exhibit 125.
- 8 Government Exhibit 126. Government Exhibit 127. Government
- 9 Exhibit 128. Government Exhibit 129. Government Exhibit 130.
- 10 MR. RUBINSTEIN: Can I see that, please?
- 11 MR. KWOK: Government Exhibit 131 and Government
- 12 Exhibit 132.
- 13 BY MR. KWOK:
- 14 Q. Ms. Riley, did you review additional invoices in the course
- of your analysis?
- 16 A. Yes.
- 17 Q. I am showing you a document already in evidence as
- 18 Government Exhibit 120A. Do you recognize what's already in
- 19 evidence as Government Exhibit 120A, Ms. Riley?
- 20 A. Yes, it's an invoice for Silicon City.
- 21 Q. How are you able to recognize it?
- 22 A. The company name is at the top, and I have initialed at the
- 23 bottom that I have seen it.
- Q. Now let's start with the first page. What is the item
- shown on the first page of that invoice?

8657KAR2 Riley - direct

- 1 A. A ten foot screen for \$2,315.50.
- 2 Q. And what is the total amount of that invoice?
- 3 A. \$2,583.05.
- 4 Q. And what is at the bottom portion of that page?
- 5 A. At the bottom?
- 6 Q. That's correct.
- 7 A. It's Computer Aided Surgery, NIST ATP DMT Program check
- 8 number 10220 paid in the amount of \$2,583.05.
- 9 Q. And what is the check number again for that check?
- 10 A. 10220.
- 11 Q. Ms. Riley, I am showing you a page from Government Exhibit
- 12 81.
- 13 THE COURT: What account was that on?
- MR. KWOK: Sorry, your Honor.
- 15 THE COURT: 10220, what account is it drawn on?
- 16 THE WITNESS: It's shown on the bottom of the page of
- 17 the invoice.
- 18 THE COURT: What account was it drawn on?
- 19 THE WITNESS: From the Computer Aided Surgery NIST ATP
- 20 DMT Program account.
- 21 Q. I am showing you a page from Government Exhibit 81. It's
- 22 already in evidence and is marked as page 23 at the bottom
- 23 right-hand corner of the jury binders. If we could put that up
- on the screen, page 23 of the Chase statements.
- 25 THE COURT: I'm sorry. I lost track. What's the SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 exhibit number?
- 2 MR. KWOK: It's Government Exhibit 81, your Honor.
- 3 THE COURT: Thank you.
- 4 MR. KWOK: And the bottom is page 23 of the jury
- 5 binders.
- 6 Q. Do you have that page, Ms. Riley?
- 7 A. Yes.
- 8 Q. Can you show us where check 10220 appears on that page?
- 9 A. On the bank statement it appears here dated 6/07/2002 and
- 10 it's in the amount of \$2,583.05.
- 11 Q. Now staying on the same page, focusing your attention to
- 12 the upper right-hand corner portion of the page, underneath
- primary account number, what does that say?
- 14 A. Computer Aided Surgery Inc., NIST ATP DMT program.
- 15 Q. Now let's go back to Government Exhibit 120A, the second
- 16 page. What are the items shown on that invoice?
- 17 A. A projector and a lamp.
- 18 Q. And how much for either of those items?
- 19 A. For \$3,482.72.
- 20 MR. RUBINSTEIN: I didn't hear.
- 21 A. 3,482.72.
- 22 THE COURT: Which exhibit is on the board?
- 23 MR. KWOK: Exhibit 120A is on the board, your Honor,
- 24 page 2.
- 25 Q. What is the shipping cost?

SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR2 Riley - direct

1	Α.	\$35.
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- Q. And what is the amount minus the shipping cost?
- 3 A. The total amount is \$3,482.72 without the shipping cost.
- 4 Q. And let's look at the bottom portion of the same page. I
- 5 am still staying with Government Exhibit 120A, page 2. What is
- 6 reflected on the bottom portion of that page?
- 7 A. OK. The first Computer Aided Surgery, Inc. name, check
- 8 number 10127, of \$35 pays the shipping, the \$35 shipping. And
- 9 the next check number 10114 for \$3,482.72 on 3/29/2002 pays for
- 10 the projector and the lamp.
- 11 (Continued on next page)

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SOUTHERN DISTRICT REPORTERS, P.C.

865ZKAR3 Riley - direct

- 1 Q. And can you read off the check numbers once again?
- 2 A. 10114 and 10127.
- 3 O. Now, let's go back to government exhibit 81 now, which is
- 4 the Chase Bank account statements. Directing your attention to
- 5 page 19 of the jury binders, do you have that check?
- 6 A. Yes, on the bank statement. On check number 10114 dated
- 7 4/11, for \$3,482.72.
- 8 Q. Now about for check number 10127?
- 9 A. 10127 is for \$35, and it is also on 4/11.
- 10 Q. Let's zoom out on that page. And once again directing your
- 11 attention to the upper right-hand corner of the page, what does
- 12 that say?
- 13 A. It's for the checking account Computer Aided Surgery
- 14 Incorporated, NIST ATP DMT program account.
- 15 Q. Do you know what NIST ATP DMT stands for?
- 16 A. National Institute of Standards and Technology, Advanced
- 17 Technology Program, Digital Morse Theory.
- 18 MR. RUBINSTEIN: Judge, I can't hear her.
- 19 A. I'm sorry.
- 20 MR. RUBINSTEIN: I don't know if anybody else is
- 21 having a problem, but she drops her voice.
- 22 THE COURT: Just --
- THE WITNESS: Okay.
- 24 THE COURT: Don't be shy, just speak up.
- 25 THE WITNESS: National Institute of Standards and

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865ZKAR3 Riley - direct

- 1 Technology, and Advanced Technology Program, Digital Morse
- 2 Theory.
- 3 O. Thank you, Ms. Riley. If you could keep your voice up.
- 4 Let's go back to the invoices, government Exhibit
- 5 120A, page three. Can we zoom in on the top of that page.
- 6 What item is reflected on this invoice?
- 7 A. A Garmin Street Pilot, a GPS.
- 8 Q. How much is that?
- 9 A. For \$979.99.
- 10 Q. How about including shipping and taxes?
- 11 A. \$25 shipping, it's \$1,004.99.
- 12 Q. And what appears on the bottom of that page? Let's zoom it
- 13 back out.
- 14 A. That, that it it was paid with -- from the Computer Aided
- 15 Surgery NIST ATP DMT program account, check number 10598 for
- 16 1,004.99 on 11/11, 2002.
- 17 Q. Let's go back now to government exhibit 81, which is again
- 18 the Chase Bank statements for the CASI account, page 25 of the
- 19 jury binders.
- 20 THE COURT: I don't -- page 25 in the jury binder?
- MR. KWOK: That's correct, your Honor.
- 22 THE COURT: What's the exhibit number?
- 23 MR. KWOK: Exhibit number 81, your Honor.
- THE COURT: And what page of 81?
- 25 MR. KWOK: It's page 25 of the jury binders on the

SOUTHERN DISTRICT REPORTERS, P.C.

865ZKAR3 Riley - direct

- 1 bottom of the page.
- THE COURT: Page 25 of that exhibit?
- MR. KWOK: That's correct.
- 4 THE COURT: All right.
- 5 Q. Do you see that check on this page, Ms. Riley?
- 6 A. Yes. Check 10598 for on 11/25 for \$1,004.99.
- 7 Q. Now, let's go back to the invoice government, Exhibit 120A,
- 8 the last page. What items are shown on this invoice,
- 9 Ms. Riley?
- 10 A. Okay. This invoice to Datavision has a digital camera with
- 11 accessories.
- 12 Q. And how much altogether for those items?
- 13 A. \$1,519.95
- 14 Q. And whose handwriting is that on the bottom of the page, if
- 15 we could show that?
- 16 A. Okay. It's my handwriting. It says HBR. It's saying that
- the American Express transaction was on 9/20 of '02.
- 18 Q. And how much is that transaction?
- 19 A. American Express is going to be -- \$1,519.95.
- 20 Q. Okay. Now directing your attention now to government
- 21 exhibit 90, 90, looking at the statement, the closing date?
- THE COURT: Hold on a second.
- 23 MR. KWOK: Government exhibit 90, your Honor?
- 24 THE COURT: I have to switch books here. All right
- 25 exhibit 90. What page?

865ZKAR3 Riley - direct

- 1 MR. KWOK: I'm showing you -- what page is that,?
- 2 It's page five of eight, exhibit 90.
- 3 THE DEPUTY CLERK: Five of eight?
- 4 MR. KWOK: Exhibit 90. I'm looking at the statement
- 5 with closing date of October 8th, 2002, page five of eight.
- 6 THE COURT: All right.
- 7 Q. Okay. Ms. Riley, directing your attention to September
- 8 20th, 2002.
- 9 A. There is an American express transaction to Datavision for
- 10 \$1,519.95.
- 11 Q. Is that the same amount or different from the amount we
- 12 looked at in government exhibit 120A, the invoice just now?
- 13 A. It's the same amount.
- 14 Q. And still looking at that page, still government exhibit
- 15 90 --
- 16 THE COURT: Let me just see -- I'm sorry, I missed her
- 17 explanation.
- 18 Q. Ms. Riley, can you --
- 19 THE COURT: I have the wrong page up now. Let's see
- 20 where we are. This is what page? I have five of eight. What
- 21 page should I be on?
- 22 MR. KWOK: It's page five of eight for the statement
- with closing date October 8, 2002.
- 24 THE COURT: I don't have that. That's not --
- MR. KWOK: We could hand up an extra copy.

SOUTHERN DISTRICT REPORTERS, P.C.

865ZKAR3 Riley - direct

- 1 THE COURT: There is more than 1 five of eight. All
- 2 right, okay. Go ahead.
- MR. KWOK: Thank you, your Honor.
- 4 Q. Directing your attention again, Ms. Riley, to September
- 5 20th, 2002, what does that show?
- 6 A. The American Express shows the transaction payment to
- 7 Datavision of \$1,519.95.
- 8 Q. And how does that amount compare to the amount we just
- 9 looked at in government exhibit 120A?
- 10 A. It's the same amount that's on the invoice to Datavision.
- 11 Q. And still staying with that page, government exhibit 90,
- 12 page five of eight, what is the section heading just above that
- list of transactions?
- 14 A. Oh, Expo transactions for Dr. D. B. Karron.
- MR. KWOK: One moment, your Honor.
- 16 THE COURT: This is an American Express charge?
- 17 THE WITNESS: Yes.
- 18 THE COURT: We don't have how it's paid for yet, do
- 19 we?
- 20 MR. KWOK: I'm sorry?
- 21 THE WITNESS: This is --
- 22 THE COURT: We don't know how the credit, the American
- 23 Express card credit account was paid for, do we?
- MR. KWOK: Okay.
- Q. Ms. Riley, can you show us how that outstanding credit card SOUTHERN DISTRICT REPORTERS, P.C.

865ZKAR3 Riley - direct

- 1 balance is paid for.
- 2 A. Okay, let's see. Okay, it should show up in the -- next
- 3 month's payments.
- 4 Q. Can I direct your attention to government exhibit 110, the
- 5 data base?
- 6 A. Yes.
- 7 (Pause)
- 8 Q. Directing your attention to page, government exhibit 110,
- 9 page three of 37. What information is reflected for October
- 10 18th, 2002?
- 11 A. That an American express electronic remittance \$5,736.51.
- 12 THE COURT: From what account?
- 13 THE WITNESS: From the CASI business account, or the
- 14 business accounts from the CASI bank.
- 15 THE COURT: CASI business, what account? You said
- there were more than one, didn't you?
- 17 THE WITNESS: Yes. It's from the -- this report
- 18 doesn't identify it.
- 19 THE COURT: I'm sorry?
- 20 THE WITNESS: This report doesn't identify the
- 21 specific account, but in my -- I have a note in my data base, I
- 22 know which one it's from. It's from the -- it's from one of
- 23 the CASI business accounts.
- Q. And how is this account funded, Ms. Riley?
- 25 A. From the NIST deposits.

865ZKAR3 Riley - direct

- 1 Q. Does it have any source of funding from anywhere else?
- 2 A. Just a small -- a small a miscellaneous, small amount from
- 3 somewhere else.
- 4 MR. KWOK: No further questions, your Honor.
- 5 THE COURT: All right.
- 6 MR. RUBINSTEIN: Good time to take a little recess.
- 7 THE COURT: Let's take the morning break and come
- 8 back.
- 9 (Recess)
- 10 THE COURT: All right, let's bring in the jury. Is
- 11 Dr. Karron here? You want to call Dr. Karron? No one's going
- 12 to go out after him?
- MR. RUBINSTEIN: Aye aye, sir.
- 14 THE COURT: You got an assistant.
- 15 MR. RUBINSTEIN: He's doing something else, Judge.
- 16 THE COURT: He has no authority.
- 17 MR. RUBINSTEIN: He's not admitted to the Circuit,
- 18 Judge.
- 19 (Jury entering)
- THE COURT: All right, please be seated.
- 21 (Continued on next page)

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- 1 THE COURT: Mr. Rubinstein, cross-examination.
- 2 CROSS EXAMINATION
- 3 BY MR. RUBINSTEIN:
- 4 MR. RUBINSTEIN: Thank you, your Honor.
- 5 Q. Good morning, Ms. Riley.
- 6 A. Good morning.
- 7 Q. Now, you are working for the OIG's office?
- 8 A. Yes, sir.
- 9 Q. And how long have you -- are you working there?
- 10 A. Since June of '97.
- 11 Q. And prior to that, you were an Internal Revenue Agent?
- 12 A. Yes, IRS.
- 13 Q. IRS?
- 14 A. Yes.
- 15 Q. And how long were you with IRS?
- 16 A. From '86 to '97.
- 17 Q. Now, did you do field audits or --
- 18 A. Yes.
- 19 O. -- work inside?
- 20 A. Field audits.
- 21 Q. And when did you meet people from the federal government on
- 22 this case for the first time, I mean people at the prosecution
- table here, first time?
- 24 THE COURT: Are you referring to -- one person's from
- 25 the agency, Mr -- are you referring to her?

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865zkar3 RILEY - CROSS

1 MR. RUBINSTEIN: Well, let's start with her.

- 2 Q. Do you know the lady seated in the middle?
- 3 A. Yes.
- 4 O. And who is she?
- 5 A. Rachel Ondrik.
- 6 Q. And the gentleman at the end?
- 7 A. Kirk Yamatani.
- 8 Q. And on this case in dealing with this ATP grant to CASI,
- 9 when did you meet either or both of them for the first time?
- 10 A. I don't -- I don't -- I'm not sure.
- 11 Q. Was it in the year 2003?
- 12 A. I'm not sure if it was 2003, 2004.
- 13 Q. Was it in 2008?
- 14 THE COURT: She said she was not sure whether it was
- 15 2003 or 2004.
- 16 Q. Well, do you have anything that could refresh your
- 17 recollection as to when you met these people for the first
- 18 time?
- 19 A. For this case, I don't know -- I'm not sure -- I'm not sure
- when that would be.
- 21 Q. All right. When is the -- before you came here to
- 22 testify -- you're from another state, correct?
- 23 A. Yeah, I'm from Atlanta, Atlanta region.
- Q. Okay, from the Atlanta region. When did you come here to
- 25 testify on this case?

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- 1 A. For this?
- 2 Q. Yeah.
- 3 A. I came -- you mean for this week for the trial or --
- 4 Q. No. When did you come from Atlanta, Georgia, right;
- 5 Atlanta, Georgia, right?
- 6 A. For the trial, I came Monday.
- 7 Q. Before you came Monday, were you here in preparation for
- 8 your testimony on this trial?
- 9 A. Yes.
- 10 Q. And when did you come for the first time for your
- 11 preparation for this trial?
- 12 A. That I'd have to look back. I'm not sure.
- 13 Q. Well, was it a month ago, two weeks ago?
- 14 A. For preparation for the trial, it would've probably been
- 15 maybe the end of April.
- 16 Q. And you stayed; you didn't commute back and forth to
- 17 Atlanta, Georgia, correct? Did you commute back and forth
- 18 while you were preparing for this trial?
- 19 A. Yes.
- 20 Q. And how long did you stay when you came sometime in April?
- 21 A. For a day.
- 22 Q. And then you would go back?
- 23 A. Yes.
- Q. And then you would come back again?
- 25 A. Yes.

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- 1 Q. For another day?
- 2 A. Yes.
- 3 O. About how many trips, day trips did you make, ma'am?
- 4 A. I think maybe three.
- 5 Q. And did you have telephone contact with either the agent
- 6 that you pointed -- the agents you pointed out or anybody in
- 7 the U.S. Attorney's Office?
- 8 THE COURT: When?
- 9 Q. Between April when you started coming here?
- 10 A. Yes.
- 11 Q. And how often would you have contact?
- 12 A. Well, Kirk and Rachel work in the same office I do.
- 0. Okay. So you would see them in Atlanta?
- 14 A. If we all happened to be in that day.
- 15 Q. Well, did you have an interview with them, with Kirk and
- 16 Rachel on April 22nd, 2008?
- 17 A. I could have. I'm --
- 18 Q. Well, would meet with you in Atlanta, Georgia or would they
- 19 meet with you here in New York?
- 20 A. For trial prep?
- 21 Q. For trial prep.
- 22 A. It would -- it --
- THE COURT: What was your answer?
- 24 A. For -- how do we define trial prep? I mean, I can meet at
- 25 either -- I mean for trial prep, I would come up and meet with SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 Steve.
- Q. Mr. Kwok, the Assistant U.S. Attorney, correct?
- 3 A. Yes.
- 4 Q. When you met with Rachel did you --
- 5 MR. RUBINSTEIN: Let me just approach the Government
- for a moment, your Honor.
- 7 Q. When did you meet Mr. Kwok for the first time?
- 8 A. I'm not sure.
- 9 Q. Was it prior to 2008?
- 10 A. Prior to 2000 -- I'm not sure when I met him.
- 11 Q. Now, you, as member of the Office of the Inspector General,
- 12 you're in the civil portion of that office, correct?
- 13 A. I'm in the audit portion of that office.
- 14 Q. And is that civil or criminal end?
- 15 A. Neither. It's -- I do -- I normally do audits.
- 16 Q. And the two agents here are?
- 17 A. Investigators.
- 18 Q. Investigators. In the criminal division?
- 19 A. Yes -- well, whatever, civil or criminal.
- 20 THE COURT: Is there a criminal division and civil
- 21 division?
- 22 THE WITNESS: No, no. There's only -- there's -- they
- 23 handle -- I think -- I understand they handle both.
- Q. You understand they're called special agents, correct?
- 25 A. Yes.

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1 Q. So you understand that they have the power to arrest

- people, correct?
- 3 A. Yes.
- 4 Q. Now, I asked you yesterday on the voir dire if you had any
- 5 documents that you used in preparing your report in July of
- 6 2003, the first report that you prepared here?
- 7 A. Yes.
- 8 Q. And did you have any documents?
- 9 A. Yes.
- 10 Q. Did you review those documents between yesterday and today?
- 11 A. Yes.
- 12 Q. Do you have them with you?
- 13 A. Um, I -- my computer. I don't have a printed copy of them.
- 14 Q. Well, did you print a copy out in 2003, in June or July of,
- or August of 2003, while you were preparing your first audit?
- 16 A. I had printed copies of the documents. Yes, I got printed
- 17 copies of the documents somewhere.
- 18 THE COURT: On the computer, the computer documents;
- 19 is that what you're saying? Or are you talking about the
- 20 documents you -- any documents you inspected at the offices of
- 21 CASI?
- 22 THE WITNESS: I've got either -- some of the documents
- 23 I have are computer documents and some of the documents I have
- have been printed.
- THE COURT: By?

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1 THE WITNESS: By -- I don't know if it was by me or by

- 2 CASI, I mean because it was 2003.
- 3 THE COURT: Were they printed by computer -- out of
- 4 the computer?
- 5 THE WITNESS: They were printed, and I had computer
- 6 records that were provided by CASI, copies of some computer
- 7 records and some of them were printed and some of them were
- 8 not.
- 9 THE COURT: So some of them were printed off CASI's
- 10 computer?
- 11 THE WITNESS: Possibly some.
- 12 THE COURT: Some were printed off your computer?
- THE WITNESS: Possibly, yes.
- 14 THE COURT: Well, not possibly.
- THE WITNESS: Yes.
- 16 THE COURT: Yes or no?
- 17 THE WITNESS: Yes, yes. It could be at the -- it
- 18 could be either one. I mean --
- 19 THE COURT: I'm --not possibly. Yes or no.
- 20 THE WITNESS: Off the top of my head, I don't remember
- 21 which documents were printed and given to me or which documents
- 22 I got back to Atlanta.
- THE COURT: They were either printed --
- 24 THE WITNESS: Yes.
- 25 THE COURT: -- off the CASI's computer --

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- 1 THE WITNESS: Yes.
- THE COURT: Or off yours?
- 3 THE WITNESS: Or me.
- 4 THE COURT: All right.
- 5 MR. KWOK: Could we have a sidebar, your Honor?
- 6 THE COURT: No, you can not.
- 7 BY MR. RUBINSTEIN:
- 8 Q. Now, so you did have what's called the hard copies of items
- 9 that were on the computer, correct?
- 10 A. Some of --
- 11 THE COURT: She's answered that.
- 12 A. Yes.
- 13 Q. And where are those hard copies that you obtained in the
- 14 summer of 2003?
- 15 A. They're in the audit file.
- 16 O. And where is the audit file?
- 17 A. Here.
- 18 Q. All right. And have you turned that over to the
- 19 Prosecutor?
- 20 A. The audit file?
- 21 Q. Right.
- 22 A. I provided copies of the documents that we had from CASI to
- 23 him.
- Q. And it's fair to say you did not have a general ledger,
- 25 correct?

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1 A. I had whatever documents that CASI -- I guess it depends

- 2 how you're defining general ledger there. The thing that
- 3 that --
- 4 Q. You're saying --
- 5 THE COURT: Letter her finish her answer.
- 6 A. The number, the numbers that -- the number that you're
- 7 referring to came from the books and records provided to me by
- 8 CASI's representative Frank Spring, Joan Hayes, Bob Benedict.
- 9 Dr. Karron was aware of the documents that they provided, and
- 10 there's, there's summaries by budget category of expenses.
- 11 Those numbers were taken from, from the -- I guess it would be
- 12 the like the profit loss statement.
- 13 Q. The summaries?
- 14 A. Summaries.
- 15 Q. Right?
- 16 A. Well, it's -- there's also -- because we used different
- 17 records for 2003, they may not have been printed. They may
- 18 still be on a disk somewhere.
- 19 Q. You're a CPA, are you not, ma'am?
- 20 A. Yes.
- Q. And you know what a general ledger is, do you not?
- 22 A. Yes.
- 23 Q. And tell the jury what a general ledger is?
- 24 A. A general ledger is the ledger of accounts and how the
- 25 costs are categorized by the accounting system.

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1 Q. Does a general ledger reflect every transaction made by the

- 2 organization?
- 3 A. Yes, it should.
- 4 Q. It should?
- 5 THE COURT: Should.
- 6 Q. And if there are changes made or adjustments, sometimes
- 7 there are adjustments because --
- 8 A. Yes, there are adjustments.
- 9 Q. -- something is missed or some income is missed, correct?
- 10 A. Yes.
- 11 Q. Where would those adjustments be reflected?
- 12 A. They would be reflected in the general ledger, but they
- 13 should also be carried forward to the profit and loss
- 14 statements.
- 15 Q. Now, you never saw a general ledger here, correct? What
- 16 you just described, did you ever see that at any time from June
- 17 of 2003, to today?
- 18 A. I've gotten the, whatever the Quick Book records that they
- 19 provided to me.
- 20 Q. You know that their records that they provided to you were
- 21 summaries; you just testified to that, correct?
- 22 THE COURT: Objection.
- 23 THE WITNESS: But it's some of the --
- 24 THE COURT: One question you're asking. That's a
- double question. Ask your single question, Mr. Rubinstein, so SOUTHERN DISTRICT REPORTERS, P.C.

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1 it's clear what she's being asked and what she's answering to.

- 2 Q. Is it a fact that what you were supplied were summary
- 3 charts?
- 4 A. I was provided summaries, but I also saw the support for
- 5 the summaries.
- 6 Q. You made copies of those support for the summary?
- 7 A. I don't know the -- I don't remember. I think that there
- 8 should be somewhere, but I don't remember specifically.
- 9 Q. Do you recall -- you met with a man named Mark Spitz,
- 10 correct -- Mel Spitz?
- 11 A. Mel Spitz, yes.
- 12 Q. And he was introduced to you as the new auditor for CASI
- 13 LLC?
- 14 A. Yes.
- 15 Q. Correct? And you met him sometime in December of 2003,
- 16 right?
- 17 A. Yes.
- 18 THE COURT: I thought we're talking about June, July
- 19 2003, Mr --
- MR. RUBINSTEIN: We were.
- 21 THE COURT: So now we're moving to December. Okay. I
- 22 just want --
- MR. RUBINSTEIN: Two years later.
- 24 THE COURT: All right, okay. So she's oriented all
- 25 right.

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1 MR. RUBINSTEIN: Well get her back to July, Judge.

- 2 We'll get her back to Atlanta too.
- 3 THE COURT: I hope we're finished with July.
- 4 Q. Did Mr. Spitz provide you with two computer disks?
- 5 A. He provided me with new books and records.
- 6 Q. Did he provide you with --
- 7 A. I don't remember if there were two disks or not.
- 8 Q. Well, did you look at what he had provided you with?
- 9 A. Yes, I did.
- 10 Q. Did they -- did what Mr. Spitz provided you with contain a
- 11 general ledger?
- 12 A. He provided expenses by budget category as -- I don't -- I
- don't remember if it was necessarily --
- 14 THE COURT: Was it in the form of a proposed general
- 15 ledger or a general ledger of any sort, or is it just proposed,
- 16 a summary of --
- 17 THE WITNESS: Yes.
- 18 THE COURT: -- the total expense; which was it?
- 19 THE WITNESS: Yes, he provided -- he provided us a
- 20 general ledger and he provided summaries of expenses.
- 21 Q. And did you utilize his documents, in any way, in creating
- 22 the financial records that you relied upon?
- 23 A. Yes.
- 24 O. And we have before us in evidence Exhibit 110 and 111. Are
- 25 you -- do you recall what those are, ma'am?

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- 1 A. 110, okay. Yes.
- 2 Q. And when did you create those exhibits 110 and 111 that's
- 3 in the books that we all have, the jurors and what have you?
- 4 A. In 2004 or -- yeah 2004, 2005.
- 5 Q. Isn't it a fact, ma'am, that you created them in
- 6 preparation for this trial?
- 7 A. I created them at the request from the request of
- 8 investigations.
- 9 O. Pardon?
- 10 A. I created them at the request of investigations.
- 11 THE COURT: Who investigation?
- 12 THE WITNESS: From Rachel or Kirk provided me with the
- 13 records I had subpoenaed.
- 14 THE COURT: I'm sorry?
- 15 THE WITNESS: From the, from our investigators they
- 16 had subpoenaed the checks, corroborated this from the banks,
- 17 the subpoenaed checks.
- 18 Q. And, in fact, you did that in May of 2008, about a week or
- 19 two before -- a week before the trial started, right?
- 20 A. No. These were created -- this, the data base was created
- 21 prior to that. I was still -- did some analysis on the account
- 22 because it had been created.
- 23 THE COURT: When was this record originally created
- that you're talking about here in the computer, 2004, 2003,
- 25 2005?

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- 1 THE WITNESS: It was created -- it was created in
- 2 two -- I'm not -- because -- I've got a couple data bases. It
- 3 was created sometime in 2004, 2005. I would have to look back
- 4 and see the exact -- look at my time, look to see the exact
- 5 time it was created.
- 6 THE COURT: That's satisfactory. Now go ahead.
- 7 Q. Now, did you examine the CASI, prior to them receiving you
- 8 or any member, to your knowledge, of the Office of The
- 9 Inspector General --
- 10 MR. KWOK: Objection.
- 11 Q. -- examine CASI prior to them receiving the actual grant on
- 12 October 1st --
- MR. KWOK: Objection.
- 14 Q. -- 2001?
- 15 THE COURT: Objection to the form of the question is
- 16 sustained. You're not asking for her knowledge, so --
- 17 MR. RUBINSTEIN: Okay.
- 18 THE COURT: Please.
- 19 O. Is it a -- does the --
- MR. RUBINSTEIN: Well, she is an expert, your Honor.
- 21 She was qualified as an expert.
- 22 THE COURT: Not an expert on that, not on when other
- 23 people might have done things.
- 24 Q. Did you examine, on behalf of NIST, CASI prior to the
- 25 granting, prior to them receiving the grant?

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1 THE COURT: Before they received the grant, did you

- 2 examine -- have anything to do with CASI?
- 3 THE WITNESS: No, no.
- 4 THE COURT: Okay.
- 5 Q. It's a fact that under -- you're governed by Title 15, CFR
- 6 14, correct?
- 7 A. For the grant, yes.
- 8 Q. Yes?
- 9 A. Yes.
- 10 Q. And as part of your responsibility of the Office of the
- 11 Attorney General, the principal officer of the recipient of the
- 12 grant is evaluated for financial responsibility, correct?
- MR. KWOK: Objection.
- 14 THE COURT: By the Attorney General?
- 15 Q. No, by the Office of the Inspector General.
- 16 THE COURT: Do you know?
- 17 THE WITNESS: They submit -- yeah. They --
- 18 THE COURT: Do you know?
- 19 THE WITNESS: That doesn't come to me. That goes to
- another section of the organization.
- 21 Q. Isn't it a fact that the key officials are examined as to
- their financial responsibility?
- THE COURT: Do you know that?
- 24 THE WITNESS: They're --
- 25 THE COURT: Do you have any knowledge of that?

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1 THE WITNESS: They do a background check before they

- 2 give the awards I think, yeah.
- 3 THE COURT: You think?
- 4 THE WITNESS: Yeah, they have a section for NIST
- 5 grants file, they have background information, financial stuff.
- 6 THE COURT: You're not involved in that?
- 7 THE WITNESS: I'm not involved in that.
- 8 THE COURT: All right.
- 9 Q. But you're familiar with the fact that under that section,
- 10 the question of whether or not OIG reviews the applicant as to
- 11 their responsibility and as to their honesty and their
- 12 financial stability --
- MR. KWOK: Objection.
- 14 Q. -- is the officials, correct?
- MR. KWOK: Objection.
- 16 THE COURT: Do you have any knowledge -- objection --
- 17 I think this is not the right witness for this, Mr. Rubinstein.
- 18 MR. RUBINSTEIN: Judge, they want Dr. Karron to know
- 19 every line in this statute.
- 20 THE COURT: I don't want to have an argument in front
- 21 of the jury of this sort. If you want to raise it, you can
- 22 raise it at the side bar, but you can probably get a
- 23 stipulation.
- Q. Are you familiar with Chapter Eight of 15 CFR, 14?
- 25 A. What is it talking about?

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- 1 THE COURT: If you want to put the -- if you want to
- 2 put something from the Code of Federal Regulations in, you can
- 3 put it into evidence. Let's not waste our time with this
- 4 witness on this subject.
- 5 MR. RUBINSTEIN: I'd like to mark it then for
- 6 identification at this time as defendant's AAA.
- 7 THE COURT: Show it to the government and --
- 8 MR. RUBINSTEIN: Yes.
- 9 THE COURT: Give it to the Clerk and I'll have it
- 10 marked.
- 11 MR. RUBINSTEIN: I marked it, Judge.
- 12 THE COURT: What?
- 13 MR. RUBINSTEIN: I marked it.
- 14 THE COURT: They Code of Federal Regulations,
- paragraph eight, 14, is that correct?
- 16 MR. RUBINSTEIN: Your Honor, it's chapter eight.
- 17 THE COURT: What have you marked it as?
- MR. RUBINSTEIN: AAA.
- 19 THE COURT: Defendant's AAA?
- 20 MR. RUBINSTEIN: Yes. It's chapter eight, referring
- 21 to page five, your Honor.
- 22 THE COURT: Just chapter eight, page five?
- MR. RUBINSTEIN: And chapter nine.
- 24 THE COURT: Not paragraph 14.
- MR. RUBINSTEIN: Chapter nine, page seven.

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- 1 THE COURT: I'm sorry, I didn't hear that.
- 2 MR. RUBINSTEIN: Chapter nine, page seven.
- 3 THE COURT: Eight code of Federal regulations, chapter
- 4 nine, page seven; is that correct?
- 5 MR. RUBINSTEIN: Your Honor --
- 6 THE COURT: We could do this outside the presence of
- 7 the jury.
- 8 MR. RUBINSTEIN: Yes, your Honor.
- 9 BY MR. RUBINSTEIN:
- 10 Q. As part of your responsibility as a member of the Office of
- 11 the Inspector General, you're provided with all of these 15 CFR
- 12 sections, correct?
- MR. KWOK: Objection.
- 14 THE COURT: Objection sustained. Now let's get ahead
- 15 with this. It doesn't bear on this witness' testimony. Come
- 16 on.
- 17 MR. RUBINSTEIN: Judge, they put on the board --
- 18 MR. KWOK: Objection.
- 19 MR. RUBINSTEIN: -- 15 CFR.
- 20 THE COURT: You could put up on the board CFR too.
- 21 All you got to do is move it into evidence.
- 22 MR. RUBINSTEIN: It's in evidence, Judge. Could you
- 23 put Exhibit 4 --
- 24 THE COURT: What is in evidence?
- 25 MR. RUBINSTEIN: Exhibit 4, Government's exhibit 4.

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- 1 THE COURT: All right. If it's already in evidence,
- then why are we marking this other thing for?
- 3 MR. RUBINSTEIN: Because it's only referenced in
- 4 Exhibit 4. This it page 11, your Honor.
- 5 THE COURT: All right.
- 6 MR. RUBINSTEIN: 7 or 11, let me see.
- 7 THE COURT: Do you want to have it marked in evidence,
- 8 offer it in evidence.
- 9 MR. RUBINSTEIN: Pardon, Judge?
- 10 THE COURT: Look, we're interrupting the
- 11 cross-examination here. Let's get this thing moving. We've
- 12 had a half-hour of examination and we haven't yet gotten to
- anything about this witness' testimony. Let's get on.
- 14 BY MR. RUBINSTEIN:
- 15 Q. When were you first contacted about the audit of the --
- 16 review what was allowable for CASI Corporation, CASI, Inc.?
- 17 A. End of April -- approximately May of 2003.
- 18 Q. And who notified you?
- 19 A. Our office got a request from NIST grants office to do an
- 20 audit, to review the financial status of CASI.
- 21 Q. And did you -- and did you speak to a person from NIST,
- 22 personally?
- 23 A. I spoke to Hope and to B.J., Hope Snowden, and who is the
- grants officer, and B. J. Lide, who was the program officer.
- 25 O. And did --

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1 THE WITNESS: I think Jane Orthwein, who is also a

- 2 program officer.
- 3 THE COURT: I'm sorry?
- 4 THE WITNESS: And to Jane Orthwein, who is also a
- 5 program officer.
- THE COURT: Who? What's the other name?
- 7 THE WITNESS: B. J. Lide and Jane Orthwein, I think
- 8 it's O-r-t-h-w-e-i-n.
- 9 THE COURT: And is there a third person?
- 10 THE WITNESS: I could've talked to one of Hope's
- 11 supervisors, which --
- 12 THE COURT: All right.
- 13 THE WITNESS: Marilyn.
- 14 Q. Did you have a meeting with these people in person or over
- 15 the telephone or what?
- 16 A. I had a meeting with them in person.
- 17 Q. All three of them?
- 18 A. Yes.
- 19 Q. And did you subsequently -- who is William F. Bedwell?
- 20 A. He was the regional Inspector General for Atlanta at the
- 21 time.
- 22 Q. And did he assign you to investigate the expenses of CASI?
- 23 A. He would've provided the audit assignment when the audit
- started in May of 2003.
- Q. And when did the audit actually start?

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1 A. Well, when I got there when, when our office decided to

- 2 perform the audit, I called to request a meeting with Dr.
- 3 Karron, with CASI representatives, and they were redoing the
- 4 books.
- 5 THE COURT: What's the date? All we need is the date
- 6 when, that's all, that's all he asked.
- 7 THE WITNESS: I don't know -- okay. I don't -- in May
- 8 of 2003. I don't know the specific date.
- 9 Q. Did you have that -- is that called an entrance conference?
- 10 A. We had the entrance conference on June 18th when I arrived
- in New York.
- 12 Q. And who did you meet with?
- 13 A. Dr. Karron and Bob Hayes and Joan Benedict, and I don't
- 14 remember Frank Spring was there or not.
- 15 Q. And that was at -- you met with them at the headquarters of
- 16 CASI?
- 17 A. Yes.
- 18 Q. Correct? And CASI -- what organization had received the
- 19 grant from NIST, the ATP grant from NIST?
- 20 A. I think it was Computer Aided Surgery, Incorporated.
- Q. And you ascertained that Dr. Karron was the principal
- 22 officer of that corporation?
- 23 A. Yes.
- 24 Q. Were you aware, when you began the audit, what the official
- 25 name of CASI was?

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- 1 A. It was at one time CASI, Computer Aided Surgery Informatics
- 2 Corporation, and so they preferred to be called CASI. So
- 3 that's normally the name that I used for them.
- 4 Q. Were they incorporated; was it then as CASI, Inc?
- 5 A. Oh, I think it could have been, yes. Maybe.
- 6 Q. Well, are you aware whether or not at any time they changed
- 7 their name from CASI, Inc. to CASI LLC?
- 8 A. Yes, they had changed their name to CASI LLC.
- 9 Q. Now, when you went to the location at 300 East 33rd Street,
- 10 apartment, it was apartment 1N, correct?
- 11 A. I think that's the address.
- 12 Q. And you had made an appointment before you got there?
- 13 A. Yes.
- 14 Q. And when you arrived -- approximately, what time did you
- 15 get there?
- 16 A. I don't remember if that was a morning or evening. I had
- 17 come over from -- I had taken the train from D.C, and I don't
- 18 remember if I went -- if it was in the morning appointment or
- 19 evening appointment or afternoon appointment.
- Q. And for sure Joan Hayes was there, correct?
- 21 A. Yes, I think Joan Hayes was there.
- 0. Bob Benedict was there?
- 23 A. Yes.
- Q. And Dr. Karron was there?
- 25 A. Yes.

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1 Q. Now, were there other people present when you arrived

- 2 there?
- 3 A. Yes. I think probably Jim Cox was there, and maybe Mat
- 4 Rothman.
- 5 Q. And they were identified to you as employees of CASI?
- 6 A. Yes.
- 7 Q. They were -- you were informed they were working on the ATP
- 8 project?
- 9 A. Yes.
- 10 Q. And when did you -- had you talked to Joan Hayes prior to
- 11 your visit on June 18, 2001?
- 12 A. I don't remember specifically if I talked to her. I could
- have and, in scheduling the appointment, because they were
- trying to redo the books, and so we had rescheduled. So I'm
- 15 not sure who I -- if I spoke directly with Dr. Karron for that
- or if I talked to one of his representatives.
- 17 Q. And how long did this visit take, this first visit?
- 18 A. It started I think probably on Wednesday of one week and
- 19 through Thursday or Friday the next week.
- 20 Q. Now this -- what room did you meet these three people in,
- 21 Dr. Karron, Bob Benedict --
- 22 A. At CASI's, at the CASI, Dr. Karron's apartment, CASI
- office, that, the first meeting?
- 24 Q. Yes.
- 25 A. Okay. The first meeting was there at the business.

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1 Q. At the business. And it was in the business section of the

- 2 apartment?
- 3 A. It was in the living room, I guess the living room of the
- 4 apartment, the business.
- 5 Q. You say living room. Was there, were there couches in
- 6 there?
- 7 A. No, there were computers in there.
- 8 Q. Were there furniture that you would expect to find in what
- 9 would commonly be called a living room?
- 10 A. No.
- 11 Q. And, approximately, how many computers were there?
- 12 A. I think there were four.
- 13 Q. And how large were they?
- 14 A. They were, they were large. I mean, they -- I know a
- 15 couple of them had two monitors. I don't remember if all four
- of them had two monitors.
- Q. And were there work areas for people to work at that had
- 18 smaller computers?
- 19 A. There were -- there were -- I, I don't remember. There
- 20 was, there were -- I don't remember the size of all the
- 21 computers.
- 22 Q. But there was also a bedroom there, correct?
- 23 A. Yes.
- 24 O. And --
- MR. KWOK: Objection, relevance.

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1 THE COURT: I will allow the question. I'll allow the

- 2 question. Is there a bedroom in the apartment?
- THE WITNESS: Oh, I'm sorry. Yes.
- 4 Q. I'm going to show you what's being marked as defendant's
- 5 BBB for identification?
- 6 THE COURT: 3 B's?
- 7 MR. RUBINSTEIN: 3 B's, yes, your Honor.
- 8 Q. And ask you if you recognize what is depicted in that
- 9 document?
- 10 MR. KWOK: Your Honor, may we approach to look at it?
- 11 THE COURT: There are four -- it's more than one
- 12 picture.
- MR. RUBINSTEIN: Yes, your Honor.
- 14 THE COURT: Six pictures.
- 15 THE WITNESS: Yeah, it's -- it's the CASI office
- 16 apartments.
- 17 Q. Thank you.
- THE COURT: All of it, the entire apartment?
- 19 THE WITNESS: It's the section that was known as the
- 20 living room of the apartment, would have been the living room
- 21 section of the apartment.
- 22 THE COURT: Pictures of the part of the living room?
- 23 THE WITNESS: Yeah, it's the -- it's a small living
- 24 room. It has computer desks around it.
- THE COURT: Let's get on with this, Mr. Rubinstein,

SOUTHERN DISTRICT REPORTERS, P.C.

865zkar3 RILEY - CROSS

- 1 instead of --
- 2 MR. RUBINSTEIN: Yes, Judge.
- 3 THE COURT: Let's move it on. We've got to get to the
- 4 testimony and what she's testified about, now let's move it
- 5 along.
- 6 MR. RUBINSTEIN: We offer this in evidence.
- 7 THE COURT: We've been here almost 45 minutes on this
- 8 cross-examination.
- 9 MR. RUBINSTEIN: The government told me they were
- 10 going to be 45 minutes long.
- 11 THE COURT: Let's move it along.
- 12 MR. RUBINSTEIN: I want to offer BBB in evidence.
- MR. KWOK: No objection.
- 14 THE COURT: No objection? BBB is received in
- 15 evidence.
- 16 (Defendant's Exhibit BBB received in evidence)
- MR. RUBINSTEIN: Put this on the Elmo, please.
- 18 THE COURT: I guess you have to -- you have to move it
- 19 sideways too for the jury to get any idea. That's upside down.
- 20 Q. Now, you see the screen in the bottom as you face the
- 21 picture on the bottom right portion; you see what's depicted
- 22 there?
- 23 A. Yes.
- Q. Pardon?
- 25 A. The screen, yes.

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- 1 Q. And did you see that screen in the apartment?
- 2 A. I don't recall if I saw the screen or not. They did a
- 3 presentation, but I was thinking it was on the monitor,
- 4 computer monitors, but I don't recall if I saw.
- 5 Q. And did you see in the, in 120A they presented an exhibit
- 6 that sort of looked like this item over here, a lamp with a
- 7 projection; did you see that?
- 8 A. At the apartment?
- 9 Q. At the apartment.
- 10 A. I don't recall if I saw that at the apartment.
- 11 THE COURT: Well, when you identified this as Dr.
- 12 Karron's apartment, does it look like the apartment at the time
- 13 that you viewed it in July 2003; is that a fair representation
- of the apartment and equipment in it at the time in July 2003?
- 15 THE WITNESS: It, it had a -- it had -- I don't
- 16 remember the -- if I saw the screen, but the other stuff is
- 17 probably so.
- 18 THE COURT: What?
- 19 THE WITNESS: The other, the rest of it probably.
- THE COURT: Not probably.
- 21 THE WITNESS: Oh, yeah.
- 22 THE COURT: You know when this picture was taken?
- THE WITNESS: No.
- 24 THE COURT: All right. Well, does it --
- 25 THE WITNESS: Yes.

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1	·	THE COURT: Therefore, that's why I'm asking you the
2	question.	
3		THE WITNESS: Yes. It looks yeah, but I was
4		THE COURT: Not the apartment itself, the equipment in
5	it.	
6		THE WITNESS: Um, yes, they had similar they would
7	have had	except for the I don't know about the I don't
8	remember	about the screen but it had did have computers
9	like that	and things under the deck and all the things.
10		THE COURT: All right.
11		(Continued on next page)
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SOUTHERN DISTRICT REPORTERS, P.C.

25

8657KAR4 Riley - cross

- 1 BY MR. RUBINSTEIN:
- Q. And there was shelving around the room?
- 3 A. There was shelfing.
- 4 Q. And it wasn't for knickknacks, right? It was for
- 5 computer-related items, correct?
- 6 THE COURT: That calls for a conclusion. Let's go
- 7 ahead.
- 8 Q. Well, you as the auditor, were you interested in
- 9 determining whether or not government money was spent on
- 10 computer-related items?
- 11 A. They had a budget for equipment.
- 12 Q. Now, were you at the apartment when the -- the prosecutor
- 13 read to you a whole list of items that were seized. Were you
- 14 present when the items were seized?
- 15 A. No.
- 16 Q. At that meeting in June of 2001 with Joan Hayes and Bob
- 17 Benedict, who did you understand Bob Benedict was?
- 18 A. June of --
- 19 Q. June of 2003 when you were conducting your audit.
- 20 A. He was the project manager.
- 21 Q. And while you were in the -- while you were at CASI, were
- you provided with any documentation?
- MR. KWOK: Time frame, your Honor.
- 24 A. Documentation for what?
- MR. KWOK: Time frame.

- 1 THE COURT: Time frame.
- 2 MR. RUBINSTEIN: When she was at the apartment.
- 3 THE COURT: Which are you talking about? July?
- 4 MR. RUBINSTEIN: I said June, Judge.
- 5 THE COURT: All right. In June.
- 6 MR. RUBINSTEIN: First I said 2001 and then I said
- 7 2003.
- 8 THE COURT: I don't want to hear that. I want to hear
- 9 her give some testimony that's accurate and straight.
- 10 THE WITNESS: He said documents.
- 11 Q. Any financial statements?
- 12 A. I was given whatever the Quick Book records were that they
- 13 provided to me.
- 14 Q. Who is they?
- 15 A. Probably Joan Hayes, Bob Benedict, Frank Spring, Dr.
- 16 Karron. I don't know who specifically handed me the
- 17 information.
- 18 Q. Was the information ready for you, or did they have to
- 19 print it out from one of the computers?
- 20 A. They were still in the process of redoing the second set of
- 21 books.
- 22 THE COURT: Did they hand it out to you or not?
- 23 THE WITNESS: They gave me some of it in computer and
- 24 some of it in hard copy.
- 25 Q. And were you shown the system that was used by the

SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR4 Riley - cross

1 principal -- by the people at CASI to keep their records?

- 2 A. Yes.
- 3 Q. And in fact every check was scanned into this system,
- 4 correct?
- 5 A. Yes, they scanned in checks and invoices.
- 6 Q. And the checks, invoices and backup, correct?
- 7 A. Yeah, the invoices would be the backup. They scanned into
- 8 the computer and destroyed the original invoice.
- 9 Q. And in your audit of reviewing whenever a check was issued
- 10 and cashed was there an invoice that backed up that particular
- 11 item?
- 12 A. I don't remember specifically what it looked like, what
- 13 that record looked like.
- 14 Q. I'm not asking you what the record looked like, ma'am.
- 15 A. You're asking me if there was a check backing up the
- 16 invoice attached to each invoice.
- 17 Q. Right.
- 18 A. I don't remember specifically in the instance of CASI if
- 19 they had copies of checks and copies of invoices attached to
- 20 each other. It's possible, but I don't specifically recollect
- 21 if they did or not.
- 22 Q. Well, if they had an expense that they wrote a check for
- 23 and there was no invoice as a backup, would you make a note of
- 24 that as an auditor?
- 25 A. Yes.

- 1 Q. And in fact in this case you made no notes of missing
- 2 invoices to match with checks, correct?
- 3 A. Right, I don't think so, right.
- 4 O. Now --
- 5 A. For the sample reviewed.
- 6 Q. That was the first review, the sample review, correct?
- 7 A. Both of them -- yes, they would have sample review.
- 8 Q. Did you ask questions of Dr. Karron?
- 9 A. Yes.
- 10 Q. And did you ask him for specific information?
- 11 A. Yes.
- 12 Q. And give us an illustration of something you asked Dr.
- 13 Karron for.
- 14 THE COURT: If you remember.
- 15 A. Well, I know I asked him what the employees did. That kind
- 16 of information? I mean --
- 17 Q. Did he respond to you?
- 18 A. Yes.
- 19 Q. Did he respond to any question you asked him?
- 20 A. I think so.
- 21 Q. Did he offer to let you use the -- excuse me one second --
- 22 and did they actually show you on a computer screen documents
- 23 that had been stored in the computer --
- 24 A. Yes, yes.
- Q. -- to show the expenses that were incurred and the backup SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR4 Riley - cross

- 1 why it was legitimate? Right?
- 2 A. They showed, documents --
- 3 MR. KWOK: Objection to form.
- 4 Q. Well, backup to explain what the expense was for.
- 5 THE COURT: Overruled. Could I hear the question
- 6 back.
- 7 (Record read)
- 8 THE COURT: It doesn't sound like a complete answer.
- 9 THE WITNESS: There was an objection, so I didn't know
- 10 if you --
- 11 A. They showed documents. They showed copies of invoices that
- 12 they had scanned into the computer.
- 13 Q. Now, you used as a starting point -- did you use as a
- 14 starting point for your audit what was the schedules of the
- most recently approved budget?
- 16 A. Yes.
- 17 THE COURT: What you were told was the most recently
- 18 approved budget.
- 19 THE WITNESS: Yes, what I was told was the most
- 20 recently approved budget. I think it was amendment 2.
- 21 Q. And in fact when you were in the apartment -- withdrawn.
- 22 You became aware during the course of your audit that
- 23 there were certain expenses attributable to work that had been
- done in the apartment, shelving and installation of wiring and
- 25 things of that nature, correct?

- 1 A. Yes. Yes.
- Q. Did you see when you were in that apartment anything that
- 3 you would describe as construction?
- 4 A. The shelves and the desks, the tables.
- 5 THE COURT: Were they under construction?
- 6 THE WITNESS: No, they weren't under construction at
- 7 the time.
- 8 Q. The shelves and the desks. And is it fair to say that you
- 9 disallowed that expense?
- 10 A. Yes.
- 11 Q. And are you familiar with -- and on what basis did you
- 12 disallow that expense?
- 13 A. It wasn't allowable per the budget.
- 14 Q. Equipment was allowable, was it not?
- 15 A. I didn't question the equipment amount up to the budget
- 16 category.
- 17 Q. Well, are you aware that under the category of equipment
- 18 you are permitted to do a certain amount of what you would call
- 19 site preparation?
- 20 A. They still had more cost -- the equipment was still over
- 21 the budget without that cost, so saying whether that was
- 22 allowable or not allowable was irrelevant as to whether it
- 23 would be qualified as allowable equipment costs.
- 24 Q. The money was spent -- in other words, are you saying now
- 25 that whatever changes were made, physical changes were made to SOUTHERN DISTRICT REPORTERS, P.C.

- 1 the apartment, were made for the benefit of the program for
- 2 carrying out the project?
- 3 MR. KWOK: Objection.
- 4 THE COURT: I didn't hear her say that.
- 5 Q. Well, are you familiar with the fact that under equipment
- 6 you are permitted -- "ATP funds may, however, be used for
- 7 construction of experimental research and development
- 8 facilities to be located within a new or existing building,
- 9 provided the equipment or facilities are essential for carrying
- 10 out the project. If such costs are proposed, include below and
- 11 provide justification." Are you familiar with that?
- 12 A. Yes.
- 13 Q. And salaries, you reviewed the salaries, did you not?
- 14 A. Yes.
- 15 Q. And what was your -- you disallowed salaries, did you not,
- 16 as part of you coming to this half a million dollar figure,
- 17 right?
- 18 A. Which figure are we talking about now?
- 19 O. Salaries.
- 20 A. Are we talking about the July report or the December
- 21 report?
- 22 Q. In your testimony did you say that you disallowed --
- 23 THE COURT: No, you've got to give her some time
- frame, Mr. Rubinstein.
- Q. Well, how about did there come a time that you in your SOUTHERN DISTRICT REPORTERS, P.C.

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1 evaluation and analysis of CASI, that you evaluated the

- 2 salaries that were being paid?
- 3 A. Yes.
- 4 O. And when was that?
- 5 A. In the December 2003 review.
- 6 Q. And at that time did you make a determination as to how
- 7 much salary was approvable?
- 8 A. Yes.
- 9 Q. How much salary was budgeted for CASI for the first year,
- 10 October 1, 2001 to September 30, 2002, the first year of the
- 11 grant?
- 12 A. I would have to look back at some documentation to know the
- 13 specific number.
- 14 Q. Pardon? Do you have anything that --
- 15 A. Dr. Karron's salary was budgeted 175,000, and the other
- employees' salaries were budgeted at 150,000.
- 17 Q. And how much of Dr. Karron's \$175,000 salary did you allow?
- 18 A. I think 85 percent of it. Is that right?
- 19 THE COURT: You look at the papers and tell us. Don't
- 20 say you think.
- 21 MR. KWOK: Your Honor, I don't know whether
- 22 Mr. Rubinstein is asking per the audit or per the bank records
- analysis.
- MR. RUBINSTEIN: I'm asking her audit, what she
- 25 allowed.

8657KAR4 Riley - cross

- 1 THE COURT: Which audit?
- 2 MR. RUBINSTEIN: In any audit.
- 3 THE COURT: 2004? July 2003? Which audit? The final
- 4 audit? The one that went up on the board?
- 5 Q. Well, did your numbers change between your first audit and
- 6 your second audit?
- 7 A. The first -- the numbers -- the number on the first audit
- 8 didn't get that detailed. The short report number of the
- 9 205,000 number came from the revised books, how much that CASI
- 10 said it spent for the NIST project, excluding the expenses that
- 11 it had for CASI, the difference between that and the deposits.
- 12 So, that number didn't come from an analysis of the specific
- 13 budget cost categories. The December report, after I met with
- 14 Mel Spitz, was an analysis of the specific budget categories,
- 15 since Dr. Karron told me he had additional new records.
- 16 Q. Do you want to look at the appendix to your draft report
- 17 that's in evidence, which is Exhibit --
- 18 A. Right. And that one says --
- 19 THE COURT: Wait. Wait until he gives you the
- 20 exhibit.
- 21 THE WITNESS: I'm sorry.
- 22 Q. 61. I'm sorry. 62. Appendix 1, page 2 of 8. Does that
- 23 refresh your recollection of how much of Dr. Karron's approved
- 24 salary you disallowed to come to your figure of over \$500,000?
- 25 A. I think 15 percent.

8657KAR4 Riley - cross

- 1 O. Pardon?
- 2 A. 15 percent. The chief technical officer, right?
- 3 Q. And that was based on an hourly computation?
- 4 A. That was based on an estimate of time spent on other
- 5 activities other than the NIST grant.
- 6 Q. What activities was that?
- 7 A. The business of CASI.
- 8 Q. Is it a fact that CASI had no other business?
- 9 A. CASI was a business though.
- 10 Q. But their only project was the ATP project?
- 11 A. Right, but there would still be expenses associated with
- 12 the existence of the business.
- 13 Q. When the budget was approved, it was approved for \$175,000,
- 14 correct, salary?
- 15 A. Correct.
- 16 Q. And was there any indication of how many hours Dr. Karron
- would spend in order to earn his \$175,000 on this ATP project?
- 18 A. I don't remember if they specifically had time sheets or
- 19 not.
- 20 Q. Did you determine how many hours a week Dr. Karron worked
- 21 on the ATP grant?
- 22 A. The salary, the hours don't -- it doesn't necessarily
- 23 matter the hours. It's percent of time worked.
- Q. Well, what about Mr. Gurfein, was he budgeted for salary?
- 25 A. Yes.

8657KAR4 Riley - cross

- 1 Q. How much was he budgeted for salary?
- 2 A. I don't recall. I don't have a copy of the budget in front
- 3 of me.
- 4 Q. So you overruled ATP that authorizes \$175,000 for Dr.
- 5 Karron, correct?
- 6 MR. KWOK: Objection.
- 7 THE COURT: Objection sustained to the form of the
- 8 question.
- 9 Q. In fact, does it refresh your recollection that Mr. Gurfein
- was to receive \$100,000 annual salary?
- 11 THE COURT: Does that refresh your recollection?
- 12 A. If I could see a copy.
- 13 Q. Why don't you look at the same page. See if it refreshes
- 14 your recollection. He was the chief operating officer,
- 15 correct?
- 16 A. Yes.
- Q. Did that refresh your recollection of what Mr. Gurfein's
- 18 salary was?
- 19 A. You said that it was \$100,000 according to the budget.
- 20 Q. And did you allow \$100,000 in costs for Mr. Gurfein?
- 21 A. Just because it's allowable in the budget category doesn't
- 22 make it allowable --
- 23 THE COURT: The question is did you or didn't you.
- 24 THE WITNESS: I --
- 25 THE COURT: Yes or no?

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8657KAR4 Riley - cross

1 THE WITNESS: I don't have the information here to

- 2 tell how much was allowable.
- 3 THE COURT: What does your report say right on the
- 4 front page?
- 5 THE WITNESS: It says how much.
- 6 THE COURT: Page 2 of 8 on the appendix.
- 7 THE WITNESS: Right. It says how much is questioned;
- 8 it doesn't say how much was allowed.
- 9 THE COURT: Well, when you say it's questioned, isn't
- 10 that you disallow it subject to their coming back to you to
- 11 show that it was appropriate?
- 12 THE WITNESS: Just because there is a budget category
- 13 with an allowable amount, that means they allow up to that
- 14 amount if applicable to the NIST project or part of the NIST
- 15 project cost. It doesn't mean you are entitled to that amount
- of money no matter what.
- 17 Q. It doesn't mean you are not entitled to it either, correct?
- 18 A. If it's allowable in the NIST ATP grant cost it's allowable
- 19 up to that amount. Just because you have an amount in a budget
- 20 for an expense doesn't mean you are entitled to that amount if
- 21 you didn't have allowable costs for that amount.
- 22 Q. If you have a budget for \$100,000 for equipment and you
- 23 spend \$100,000 on equipment for your project, is that OK?
- 24 A. If it's a NIST ATP project equipment.
- 25 Q. Well, here there is only one project, correct?

- 1 THE COURT: I'm sorry?
- 2 Q. In your audit did you find that CASI was doing any other
- 3 project other than the NIST ATP project?
- 4 A. They were working on the NIST ATP project. They may --
- 5 they also had been trying to get other awards.
- 6 Q. For this project.
- 7 THE COURT: Objection. Do you know what they were
- 8 for, other awards?
- 9 THE WITNESS: Only the one that kept coming up from
- 10 the State of New York that didn't happen.
- 11 Q. They wanted to get funds from the State of New York to add
- 12 to this NIST ATP project, correct?
- MR. KWOK: Objection.
- 14 THE COURT: Objection sustained.
- 15 Q. How much of Mr. Gurfein's \$100,000 salary did you disallow?
- 16 A. 25 percent.
- 17 Q. So, that would be \$25,000, correct?
- 18 A. Yes.
- 19 Q. If he got 100,000, it would be 25,000?
- 20 A. Yes.
- 21 Q. And on what basis did you reduce his salary by 25 percent?
- 22 A. Because of the duties that he did.
- 23 Q. He spent only 75 percent of his time on NIST ATP projects,
- is that your testimony?
- 25 A. Well, the things that Mr. Gurfein was doing were not

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1 necessarily things for the research, they were to continue the

- 2 project. So, they weren't necessarily all allowable NIST
- 3 project expenditures for grant purposes.
- 4 Q. Well, isn't it a fact that Mr. Gurfein's salary was
- 5 approved on the basis that only 75 percent of his time would be
- 6 devoted to the NIST project?
- 7 A. Right. And so when he carried it out then he wouldn't have
- 8 had --
- 9 Q. Are you aware of that, ma'am?
- 10 THE COURT: Do you know what the situation was in
- 11 terms of how his salary was computed --
- 12 THE WITNESS: I have to see the budget.
- THE COURT: -- for the budget?
- 14 THE WITNESS: I know it was a percentage of whatever
- 15 his salary was was allowable.
- 16 Q. I am asking you, ma'am, whether or not when you made the
- determination and you put in your report that \$25,000 -- this
- is reading from appendix A, page 2 of 8 pages, it says, \$25,000
- 19 of the 71,550 is questioned for the chief operating officer due
- 20 to 25 percent of his time and salary being allocated to
- 21 non-NIST activities. Correct?
- 22 A. That's what it says, yes.
- 23 Q. So, that he is supposed to invest 75 percent of his time to
- 24 a NIST activity, according to your calculation, right?
- 25 A. Yes.

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1 Q. But isn't it a fact that the budget specifically approved

- 2 by NIST ATP provided that Gurfein was only to spend 75 percent
- 3 of his time on the project?
- 4 A. So, it had 75 percent of his salary times that came up with
- 5 a lower number than a hundred percent of his salary that was
- 6 allowed for the budget.
- 7 THE COURT: What are you saying?
- 8 THE WITNESS: Well, if his -- I don't remember. But
- 9 if his salary was \$100,000 a year, and NIST allowed 75 percent
- 10 of that as NIST ATP for the budget, then 75 times a hundred
- 11 would be \$75,000 of his salary could be reimbursed by the NIST
- 12 project costs, and the other 25,000 would be paid by CASI.
- 13 THE COURT: Let me ask you a question. What did you
- understand the budget \$100,000 to be paying him? Did you
- expect it to be for 75 percent of his time?
- 16 THE WITNESS: 75 percent of the time, the salaried
- amount.
- 18 THE COURT: That's what it was in the budget.
- 19 THE WITNESS: That's what the budget would allow if he
- 20 devoted that much time to the project, yes.
- 21 THE COURT: Now, so if he spent 75 percent of his time
- on the budget, why wasn't he entitled to the full amount of the
- 23 \$100,000?
- 24 THE WITNESS: No, not working on the budget. But the
- NIST budget multiplies it out across that says \$100,000, times

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1 75 percent of his time, so that would be \$75,000 that NIST

- 2 would reimburse of the salary that he was paid. I'm not sure
- 3 if his salary was \$100,000. Whatever his salary was, times 75
- 4 percent of the time, then NIST would pay that amount.
- Is that how that's written? I don't --
- 6 THE COURT: Is that how what is written?
- 7 THE WITNESS: The budget.
- 8 THE COURT: So, you are just accepting what Mr. --
- 9 THE WITNESS: No, I'm saying how it's written.
- 10 THE COURT: Well, you are the one we're asking how
- 11 it's written, not him.
- 12 THE WITNESS: OK, I need a copy of the budget to see.
- 13 THE COURT: Well, you better examine a copy of the
- 14 budget before you start answering questions.
- 15 THE WITNESS: OK.
- 16 THE COURT: This isn't hypothetical stuff.
- 17 THE WITNESS: Right.
- THE COURT: Do you understand?
- 19 THE WITNESS: Yes.
- 20 THE COURT: All right.
- MR. RUBINSTEIN: Why don't we turn to Government
- 22 Exhibit 10B.
- 23 THE COURT: Do you have a copy before you?
- 24 THE WITNESS: Yes.
- 25 THE COURT: All right.

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- 1 Q. Have you reviewed that, ma'am?
- 2 A. Yes. Where is the thing that -- this is -- where is the
- 3 thing that incorporates this part of the award or of the
- 4 budget? Because for amendment 2 what it should say is if his
- 5 annual salary is \$100,000, then 75 percent of that would be
- 6 \$225, not \$300,000, so this should be multiplying this across.
- 7 I think these are prepared by I think CASI and submitted.
- 8 THE COURT: 10B?
- 9 THE WITNESS: Yes.
- 10 THE COURT: Is submitted by them?
- 11 THE WITNESS: Is submitted by CASI to NIST.
- 12 THE COURT: Where is what the award approved, the
- 13 budget that the award approved? Do we have that exhibit?
- 14 MR. KWOK: It's Government Exhibit 22, I believe, your
- Honor.
- 16 THE COURT: What?
- 17 DEPUTY COURT CLERK: Government 22.
- 18 THE COURT: 22.
- 19 MR. RUBINSTEIN: Your Honor, I draw. If you look
- 20 at --
- 21 THE COURT: She is looking at 22 now. Let's stay with
- 22 what she is looking at and then you can ask a question.
- 23 THE WITNESS: There should be something that breaks
- down the expenses by years.
- MR. RUBINSTEIN: Can I ask a question, your Honor?

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1 THE COURT: She hasn't answered the question yet.

- THE WITNESS: There should be --
- 3 THE COURT: This is the budget that was approved.
- 4 THE WITNESS: There should be something that breaks
- 5 down for the year one that looks similar to this, that breaks
- 6 down by year one, year two, year three, instead of just all
- 7 three together, and it should --
- 8 THE COURT: I don't follow what you're saying. But
- 9 now you can see that they requested for the three years
- 10 \$1,330,000, looking at 10B --
- 11 THE WITNESS: Yes.
- 12 THE COURT: -- for personnel.
- 13 THE WITNESS: And then looking at page 2 of this
- exhibit, the three year total is \$1,075,000.
- 15 THE COURT: So, there was some adjustment made.
- 16 THE WITNESS: Yes, there is some adjustment.
- 17 THE COURT: But you don't know what adjustment was
- 18 made.
- 19 THE WITNESS: Mathematically this should show -- the
- annual salary is \$100,000. It should be three times a 100,000,
- 21 times 75 percent, and that wouldn't be \$300,000, so there is a
- 22 mathematical thing there.
- 23 Q. Are you aware that the \$325,000 allocation for salary and
- 24 wages was off an amended budget that initially had \$375,000
- 25 that was approved?

- 1 A. Yes.
- THE COURT: You are?
- 3 THE WITNESS: Well, I know that this budget was
- 4 adjusted, and they had moved some money to consulting to pay
- 5 for George Wolberg.
- 6 THE COURT: What?
- 7 THE WITNESS: They moved some money from payroll cost
- 8 to consulting costs or subcontracting cost to pay for Wolberg.
- 9 THE COURT: I'm trying to have you tell us what you
- 10 were looking at --
- 11 THE WITNESS: Oh.
- 12 THE COURT: -- which allowed you to deduct or disallow
- 13 Mr. Elisha Goldberg's salary in the amount of \$25,000. That's
- 14 what I'm asking you to show us, what you were relying on to do
- 15 that. Now, would you show it to us.
- 16 THE WITNESS: OK. The supporting document that shows
- 17 the breakdown of costs by year, that looks similar to 10B, has
- 18 similar personnel, fringe benefits, travel, it breaks down the
- 19 cost as a year one, year two, year three, instead of a total
- 20 cost. On this it says like Lee Gurfein, \$100,000 annual
- 21 salary, percentage of time on project is estimated, the
- 22 budgeted is estimated to be 75 percent, and so that should not
- 23 be \$300,000, it should be it should be 225. Plus
- 24 mathematically it's not right.
- 25 THE COURT: All right. Well, we have to take -- SOUTHERN DISTRICT REPORTERS, P.C.

	8657KAR4	Riley - cross
1	THE WITNES	SS: But there is some other document.
2	THE COURT:	: You better study your documents, and we
3	better take a lunch	heon break. It's ten after one, so the jury
4	is excused until te	en after two. And the parties are instructed
5	they are not to tal	lk to the witness during the break.
6	(Luncheon	recess)
7	(Continued	d on next page)
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SOUTHERN DISTRICT REPORTERS, P.C.

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1 AFTERNOON SESSION

- 2:05 p.m.
- 3 (Jury not present)
- 4 MR. KWOK: Your Honor, may we just raise one quick
- 5 issue with the court --
- 6 THE COURT: Yes.
- 7 MR. KWOK: -- before we call in the jury? I believe
- 8 the witness just now was referring to some work papers or other
- 9 materials that she used to assist her in conducting her audit.
- 10 I believe she is referring to that box of documents there which
- 11 we just got on Monday. It looks like materials that she
- 12 gathered to assist her in her work. We haven't looked at it.
- 13 Defense hasn't looked at it. But if she is referring to and if
- 14 she wants to look at that to assist her, I was wondering if
- anyone had any objection to give that to the witness.
- 16 MR. RUBINSTEIN: Judge, I suggested to Mr. Kwok that I
- 17 would have no problem if she reviewed it and showed us which
- document she was going to rely upon. I don't want to have
- 19 another 2000 situation.
- 20 THE COURT: Do you want to recall her and have her
- 21 come back, have another witness? The jury is already inquiring
- 22 about where we are in this case, how many more witnesses, how
- long.
- MR. KWOK: We can take that out of order.
- THE COURT: Well, both lawyers have to agree.

SOUTHERN DISTRICT REPORTERS, P.C.

	8657KAR4 Riley - cross	
1	MR. KWOK: We have our next witness here who is Lee	
2	Gurfein. We can take him first, and in the meantime we can	
3	have the prior witness review the box of documents she was	
4	referring to.	
5	MR. RUBINSTEIN: It sounds all right. I am just goir	ıg
6	to use the facilities for a second.	
7	THE COURT: Let's call the jury in.	
8	(Continued on next page)	
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SOUTHERN DISTRICT REPORTERS, P.C.

- 1 (Jury present)
- 2 THE COURT: Ladies and gentlemen, Ms. Riley wants to
- 3 review her personal file in order to give you an answer to the
- 4 question that was pending, so she is subject to recall for that
- 5 question and continued cross-examination. In order to save
- 6 time, we have another witness.
- Will the clerk swear in the witness, please.
- 8 ELISHA GURFEIN,
- 9 called as a witness by the government,
- 10 having been duly sworn, testified as follows:
- 11 DEPUTY COURT CLERK: State your name, spell your first
- 12 and your last name slowly for the record, please.
- 13 THE WITNESS: Elisha Gurfein, E-L-I-S-H-A. Last name
- 14 G-U-R-F-E-I-N.
- 15 THE COURT: Please proceed, Mr. Everdell.
- 16 DIRECT EXAMINATION
- 17 BY MR. EVERDELL:
- 18 Q. Good afternoon, Mr. Gurfein.
- 19 A. Good afternoon.
- 20 Q. Where do you work?
- 21 A. I currently work at New York University and William
- 22 Patterson University.
- Q. What do you do at those universities?
- 24 A. I teach.
- 25 Q. What do you teach?

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 A. I teach economics and finance at William Patterson, and I
- 2 teach courses on natural resources at New York University.
- 3 Q. How long have you taught at those universities?
- 4 A. For a few years.
- 5 Q. What did you do before you were a teacher?
- 6 A. I had a company of my own in commodity trading.
- 7 Q. How long did you do commodities trading?
- 8 A. Oh, with my own company about 20 years and before that for
- 9 ten.
- 10 Q. And before you were a commodities trader, what did you do?
- 11 A. I worked for the defense industry. I worked for a company.
- 12 The name of the company was Furk & Elmer.
- 13 Q. What did you do for that company?
- 14 A. I was involved in getting -- pursuing government contracts
- 15 for the company.
- 16 Q. How long did you do that for?
- 17 A. Ten years.
- 18 Q. What is your educational background?
- 19 A. I have a bachelor's degree in mathematics, and I have an
- 20 MBA with a specialty in finance.
- 21 Q. And you mentioned government contracts. Could you explain
- 22 that a little bit more.
- 23 A. Well, I was involved in trying to obtain government
- 24 contracts for the company, but mostly the Defense Department
- and other agencies of the government.

- 1 Q. Mr. Gurfein, did there come a time when you met a man named
- 2 Daniel Karron?
- 3 A. Yes.
- 4 Q. Do you see Mr. Karron in the courtroom today?
- 5 A. Yes.
- 6 Q. Could you please point him out and describe an article of
- 7 clothing.
- 8 A. He is sitting in the courtroom with a plaid shirt.
- 9 MR. EVERDELL: Let the record indicate that he has
- 10 identified the defendant.
- 11 THE COURT: The record will so indicated.
- 12 Q. How did you first meet the defendant?
- 13 A. A mutual acquaintance some time back, probably in 2000
- 14 roughly, I'm not sure.
- 15 Q. Was that the first time you met him?
- 16 A. Yes.
- 17 Q. Did there come another time when you met him?
- 18 A. Yes.
- 19 Q. When was that roughly?
- 20 A. In the spring or early summer of 2001.
- 21 Q. And what was the reason for that second meeting?
- 22 A. Dr. Karron told me that he was going to pursue a grant from
- 23 the Department of Commerce and that he indicated to me that
- 24 because I had background in government contracts and in
- 25 business, he asked me to help him write that proposal.

- 1 Q. And was he applying for the grant on behalf of himself or a
- 2 company?
- 3 A. On behalf of a company.
- 4 Q. What company was that?
- 5 A. CASI.
- 6 Q. What's CASI stand for?
- 7 A. Computer Aided Surgery, Inc.
- 8 Q. And what was the defendant's position at CASI?
- 9 A. I believe he was the owner and president.
- 10 Q. What grant was he applying for?
- 11 A. He was applying for an ATP grant with NIST.
- 12 Q. Do you recall what NIST is?
- 13 A. The National Institute of Standards and Technology.
- 14 Q. And what was your understanding of why the defendant asked
- you to help with the grant writing proposal?
- 16 A. Because of my familiarity with government contracting and
- with writing proposals for government contracts.
- 18 Q. Did you and the defendant discuss whether you would have
- 19 any continuing role -- oh, sorry.
- 20 Did you two discuss what your role with the company
- 21 would be if you were to receive a grant?
- 22 A. Yes.
- Q. What did you discuss?
- 24 A. I was to be the business manager in the event of an award.
- Q. And what would the business manager do?

8657KAR4 Gurfein - direct

- 1 A. Basically be responsible for all nontechnical issues.
- Q. Would those include budgeting issues?
- 3 A. The purchasing of equipment, hiring of people, the
- 4 budgeting, various other financial matters.
- 5 Q. Were you going to have any other role with CASI besides
- 6 managing the grant funds?
- 7 A. Yes, I was to be attempting to obtain additional funds for
- 8 CASI that would be supplemental to the funds coming from NIST.
- 9 O. Additional funds?
- 10 A. Yes.
- 11 Q. And how much of your time was going to be spent on
- 12 nonfundraising?
- 13 A. Well, 75 percent was to be for CASI directly on the grant,
- and 25 percent was to be for other fundraising, attempting to
- 15 get more funds, which was part of the grants requirement, by
- 16 the way.
- 17 Q. How long did the grant writing process take, the proposal
- 18 writing process?
- 19 A. Several months. I can't remember exactly, but several
- 20 months.
- 21 Q. During that time did you become familiar with the financial
- 22 terms of the grant and what constituted proper and improper
- 23 expenditures?
- 24 A. Yes.
- 25 Q. How did you do that?

8657KAR4 Gurfein - direct

- 1 A. Well, the package that we received from NIST spelled out
- 2 the various requirements and the qualifications of the grant.
- 3 O. Was that the proposer's package?
- 4 A. Yes, the proposer's package, correct.
- 5 Q. And did you review those materials during the time of the
- 6 grant writing process?
- 7 A. Yes.
- 8 Q. And what did those materials say about allowable versus
- 9 unallowable costs?
- 10 A. Well, it defined what was allowed and what would not be
- 11 allowed in working on the grant.
- 12 Q. What sorts of things were those?
- 13 A. Well, it indicated that all direct costs would be allowed
- 14 pretty much, but there were certain items that were not to be
- 15 allowed like rent, utilities, accounting, legal, others I can't
- 16 remember.
- 17 Q. Did you ever discuss these rules with Dr. Karron while you
- were preparing the proposal?
- 19 A. Yes.
- 20 Q. How many times would you discuss these spending rules?
- 21 A. At various times, numerous times, but at various times
- 22 under different conditions or whatever particular item we were
- 23 discussing.
- Q. Did you discuss any particular costs with the defendant
- 25 during that period?

8657KAR4 Gurfein - direct

1 A. Yes. We discussed at the time of the writing the proposal

- 2 the writing costs, the various costs associated with that.
- 3 Q. Can you be more specific?
- 4 A. Well, I mean there were various costs that we had. In
- 5 particular, there were costs for travel to Gaithersburg where
- 6 NIST was located, there were some host travel costs, there were
- 7 motels whatever, food, whatever we expended that way, which
- 8 actually at the time I was laying out that money. And Dr.
- 9 Karron and I discussed that.
- 10 Q. You had some discussions about those costs?
- 11 A. Yeah.
- 12 Q. What was the nature of those discussions?
- 13 A. Dr. Karron said we will try and see if we can get those
- things paid, and you will get your money back and so forth.
- 15 Q. What if anything did you say to him?
- 16 A. I said, you know, they're not allowable, those costs are
- 17 not allowable, so, you know, let's not worry about it. Because
- 18 there wasn't that much money to begin with, but
- 19 notwithstanding, they weren't allowed.
- 20 Q. All right. Mr. Gurfein, did CASI eventually receive an ATP
- 21 grant.
- 22 A. Yes.
- 23 Q. And how much money was authorized?
- 24 A. My memory says \$2.1 million, but I could be off by a little
- 25 bit.

8657KAR4 Gurfein - direct

- 1 Q. And how was that money going to be disbursed?
- 2 A. In progress payments over a three-year period.
- 3 Q. Did you in fact have any continuing involvement with CASI
- 4 after the grant was awarded?
- 5 A. Yes.
- 6 Q. What was that involvement?
- 7 A. I was taken on as the business manager.
- 8 Q. How long were you the business manager?
- 9 A. For one year.
- 10 Q. Starting when and ending when?
- 11 A. Starting October 1, 2001, ending September 30, 2002.
- 12 Q. Were you paid anything for this job?
- 13 A. Yes.
- 14 Q. How much were you paid?
- 15 A. I was paid \$100,000.
- 16 Q. Mr. Gurfein, did there come a time when you met with people
- 17 at NIST after the grant was awarded to discuss the grant?
- 18 A. Yes.
- 19 O. About when was that?
- 20 A. Approximately a month or so after the award.
- Q. When was the award?
- 22 A. The award was effective October 1, 2001. We were advised
- 23 of it on October 4, 2001.
- 24 THE COURT: For the \$100,000, was that a full-time
- 25 job?

- 1 THE WITNESS: The \$100,000 was for 75 percent of my
- 2 time.
- 3 THE COURT: So, you spent 75 percent on businesses
- 4 other than CASI, is that correct? I mean 25 percent --
- 5 THE WITNESS: Yes.
- 6 THE COURT: -- on businesses of yours other than CASI.
- 7 THE WITNESS: Yes, sir. But the 25 percent was also
- 8 on CASI's behalf --
- 9 THE COURT: Yes.
- 10 THE WITNESS: -- in pursuing other funds.
- 11 THE COURT: I see. All right. Sorry, Mr. Everdell.
- MR. EVERDELL: That's all right, your Honor.
- 13 Q. So, you mentioned the meeting you had with the NIST people
- 14 after the grant was awarded.
- 15 A. Sorry?
- 16 Q. You mentioned a meeting you had with NIST people after the
- 17 grant was awarded.
- 18 A. Yes.
- 19 Q. About when did that take place again?
- 20 A. About a month or so, maybe a little more than a month after
- 21 the award.
- 22 Q. Did that meeting have a name in particular?
- 23 A. That was referred to as a kick-off meeting.
- Q. What was the kick-off meeting?
- 25 A. Well, it was a meeting to essentially restate the rules,

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8657KAR4 Gurfein - direct

1 the ground rules, what was expected of us, what that agency was

- 2 all about, namely the NIST agency, what the reporting of the
- 3 funding would be, what the reporting of progress would be, what
- 4 was allowed, what was not allowed, under what conditions would
- 5 we have to apply for a change to the budget that was approved.
- 6 Q. And who attended this meeting from CASI?
- 7 A. Dr. Karron and I attended that meeting.
- 8 O. And who attended from NIST?
- 9 A. Well, Hope Snowden, who was the grant administrator
- 10 attended, as did Jayne Orthwein and B.J. Lide, and there might
- 11 have been some other people. I think maybe Marilyn Goldstein,
- 12 and I think even the director might have popped in for a little
- 13 bit, Mark Stanley. I remember shaking his hand. That's all I
- 14 remember.
- 15 Q. Those other people that you mentioned -- Hope Snowden,
- Jayne Orthwein, B.J. Lide -- who are they?
- 17 A. Hope Snowden was a grant administrator.
- 18 Q. Was she on this particular grant with CASI?
- 19 A. Yes, yes. B.J. and Jayne were supervisory management type
- 20 persons who were more involved in the technical aspects, as
- 21 well as the business but in the overall aspects of the grant.
- 22 Q. And what happened at the kick-off meeting?
- 23 A. How do you mean?
- Q. Did the people at NIST have any discussions with you at
- 25 that meeting?

- 1 A. Yes, they told us what they expected of us.
- Q. And how did they impart that information to you?
- 3 A. There was a presentation made to us.
- 4 Q. I want you to take a look at what's already in evidence as
- 5 Government Exhibit 4, which in the folder in front of you, one
- 6 of those two folders.
- 7 A. Yeah.
- 8 Q. Display the first page.
- 9 A. I see it.
- 10 Q. Do you recognize what that is?
- 11 A. Yes.
- 12 Q. What is that?
- 13 A. That was part of the presentation made to us at the
- 14 kick-off meeting.
- 15 Q. What did that presentation involve?
- 16 A. That presentation involved a statement of what the ATP
- 17 program was and what our responsibilities would be in reporting
- 18 and so forth.
- 19 Q. What if anything were you told about the responsibilities
- 20 concerning the budget?
- 21 A. With respect to the budget?
- 22 O. Yes.
- 23 A. Well, one of the things we talked about was if we were more
- 24 than a certain percentage from the budgeted numbers, then we
- 25 had to apply for permission to do that.

- 1 BY MR. EVERDELL:
- 2 Q. And how did that permission come?
- 3 A. That would be in writing.
- 4 Q. What, if anything, were you told about spending outside the
- 5 budget?
- 6 A. That it could be allowed, but it would have to be approved.
- 7 O. What about direct versus indirect costs, were you told
- 8 anything about that?
- 9 A. Right. I mean we were able pretty much to spend on
- 10 indirect -- I'm sorry -- on direct costs in a most general way,
- 11 but indirect costs were generally not allowed.
- 12 Q. What were those things covered at this meeting?
- 13 A. Well, again, the rent, the utilities, accounting, legal,
- 14 maybe some other items. I can't recall.
- 15 Q. Now, around the time when the grant was awarded and the
- 16 kickoff meeting occurred, did you have any discussions with Dr.
- 17 Karron about any particular expenditures?
- 18 A. Well, again leading up to the award, we had discussed
- 19 various of those items that were not allowed. Again, we
- 20 discussed the proposal writing costs.
- 21 Q. What exactly did you discuss about?
- 22 A. Well, whether they would be allowed and -- you know, it was
- 23 I thought pretty clear that we weren't allowed, but he said
- 24 maybe we'll get them allowed. But I'm not sure how that was
- 25 going to happen.

- 1 Q. To your knowledge, were any of those preproposal costs ever
- 2 approved by NIST people?
- 3 A. Not to my knowledge.
- 4 Q. What other specific expenditures did you discuss with the
- 5 defendant around this time when the grant was awarded?
- 6 A. Well, after the award, we discussed rent and utilities and
- 7 legal and accounting.
- 8 Q. Let's talk about rents and utilities for a moment. What
- 9 was the nature of your discussions about rent and utilities?
- 10 A. Well, we had, in the proposal, and as approved in the
- 11 grant, we had indicated that we were going to be involved with
- 12 the City University at Fifth Avenue and 34th Street with the
- 13 graduate center there, the computer science part of it, where
- 14 we would have a facility there, and that facility would be a
- 15 company with some support staff from graduate students or
- 16 whatever, who were in the computer science area.
- 17 Q. What happened with respect to that facility?
- 18 A. Well, it was decided that we would not be using that
- 19 facility.
- 20 Q. Why not?
- 21 A. I think Dr. Karron had indicated that the overhead rates
- 22 for the people there was high, and that it was something that
- 23 would not be desirable.
- Q. So where did CASI set up its business location?
- 25 A. We set up, basically, in Dr. Karron's apartment.

865ZKAR5

Gurfein - direct

- 1 Q. And what, if any, discussions did you have with the
- 2 defendant about rent and utilities with respect to the business
- 3 space of CASI?
- 4 A. Well, yeah, he felt that -- I mean, he indicated to me that
- 5 the rent should be paid to him by CASI, because that's where we
- 6 were doing all the work, and it was essentially an office
- 7 laboratory situation.
- 8 Q. This was rent from CASI to the defendant?
- 9 A. From CASI to the defendant, yes.
- 10 Q. And when the defendant told you this, what, if anything,
- 11 was your reaction?
- 12 A. Well, it was clear that the rules, or the guidelines given
- 13 to us by the people at NIST said no, that's -- that was not
- 14 allowed.
- 15 Q. And what, if anything, did the defendant respond?
- 16 A. Well, he asked me to see if we can get it approved. So I
- 17 wound up calling Hope Snowden at NIST and asking her if it
- 18 could be approved.
- 19 Q. What, if anything, was her response?
- 20 A. She said no.
- 21 Q. And what did you do after you heard no from Hope Snowden?
- 22 A. I reported to Dr. Karron. And he said, well, we talked
- about it and he said, well, why don't you go back and try
- 24 again. But under the idea that this is a one grant company,
- and so it's clear that everything we do here is for this grant SOUTHERN DISTRICT REPORTERS, P.C.

865ZKAR5 Gurfein - direct

- and there were no other funds, and so that there's no other
- 2 activity at the moment. So that we could simply -- you know,
- 3 it would be, as he expressed it, appropriate for us to get paid
- 4 rent for that facility.
- 5 Q. And did you, in fact, call Hope Snowden again?
- 6 A. Yes, I did.
- 7 Q. And did you ask her that question?
- 8 A. Yes, I did.
- 9 Q. That way?
- 10 A. With regard, with regard to it being a one grant operation,
- 11 yes.
- 12 Q. And what was her response?
- 13 A. She said no, we can't -- we don't approve that.
- 14 Q. And what, if anything, did you do with that response?
- 15 A. I told it to Dr. Karron.
- 16 Q. And what was his response?
- 17 A. I don't know. I think he was a little none plused by it, I
- don't know exactly. For that moment we dropped it at the
- 19 moment at that point.
- 20 Q. About how many times did you speak to Hope Snowden about
- 21 this issue of rent?
- 22 A. Well, certainly twice, maybe more, but certainly twice.
- 23 Q. And did you -- did Hope Snowden ever tell you that rent was
- an allowable expense?
- 25 A. No.

865ZKAR5 Gurfein - direct

1 Q. Did you have any other discussions with Hope Snowden about

- 2 other expense?
- 3 A. Yes. We discussed other expenses. I think I probably
- 4 discussed the proposal costs expense and utilities. I think we
- 5 discussed again similar to the rent discussion.
- 6 THE COURT: Did you ever talk to anyone besides Hope
- 7 Snowden about these this rent and utilities?
- 8 THE WITNESS: It's possible. I might've discussed --
- 9 I might have called her supervisor, Marilyn Goldstein, on a few
- 10 occasions.
- 11 THE COURT: And did you get a -- what answer did you
- 12 get?
- 13 THE WITNESS: Essentially, no.
- 14 THE COURT: All right.
- 15 Q. And about how often did you call Hope Snowden and these
- 16 other people you mentioned?
- 17 A. Well, at the beginning of the grant period that I was
- 18 there, I would call her two times a week or so. As time went
- on, I called her maybe two times a month.
- 20 Q. All right. Mr. Gerfein, do you know, approximately, when
- 21 CASI received its first installment of ATP grant money?
- 22 A. I've been trying to figure that out. But I know it was
- 23 very early. It was not very much after the notice of award.
- 24 The notice of award was October 4th. I keep thinking it was
- 25 right after that, but I'm not sure.

865ZKAR5

- 1 Q. Do you recall how much was transferred into the CASI bank
- 2. account?
- A. Yes. \$150,000. 3
- Q. And where did that money go?
- A. That money went into a CASI general account of some kind. 5
- 6 Q. Did you --
- 7 A. At Chase Bank.
- Q. I'm sorry? 8
- 9 A. It was at Chase Bank, I recall that.
- 10 Q. Did you ever have any discussions with the defendant about
- that initial transfer of \$150,000? 11
- A. Yes. He, he -- we had applied for, I believe, or we had to 12
- 13 apply for it, and I think with happiness he told me one morning
- when I arrived at his apartment that the money came in, the 14
- 150,000 came in. And in the same sentence I recall he said, 15
- 16 and I've transferred \$75,000 out of the account.
- 17 Q. Did he say why he did that?
- A. Yes. He said he had some personal obligations to his 18
- 19 family, money owed to his family, and he said that he had
- 20 credit card payments to make.
- 21 Q. With respect to his obligations to his family that you
- 22 mentioned, did you ever have any other discussions with him
- 23 about that topic?
- 24 A. Well, I mean in the course of writing the proposal, he had
- 25 allowed that he had not had a -- been employed in any way, nor SOUTHERN DISTRICT REPORTERS, P.C.

865ZKAR5

Gurfein - direct

- 1 had any other grant money for sometime, and so that he had to
- 2 resort to credit cards and to family help.
- 3 O. And what in particular did you -- did he say what he was
- 4 spending the credit card money on?
- 5 A. Well, my sense was that from what the discussions were was
- 6 that he was spending it on just living. He said he had to
- 7 live, and so he used his credit cards to live.
- 8 Q. When you heard from the defendant that he had transferred
- 9 \$75,000 out of the \$150,000, what, if anything, did you say?
- 10 A. I told him he couldn't do that.
- 11 Q. And what was the defendant's response?
- 12 A. He said, I have to do it.
- 13 Q. Did he expand on that?
- 14 A. Well, he said he had no choice; he had to get rid of those
- 15 debts he had and he was taking those funds at the get --
- initially, he had to just take those funds immediately.
- 17 Q. Did you have any other discussions with the defendant about
- where the grant money was being deposited?
- 19 A. Yes.
- 20 Q. What were those discussions?
- 21 A. Well, I told him that we had to open up a separate account
- 22 for the grant so that we don't have it mixed up with any other
- 23 activities of CASI, if there were any.
- Q. And what was the defendant's response to that?
- 25 A. Well, at first he rejected the idea, I think saying that it SOUTHERN DISTRICT REPORTERS, P.C.

- 1 was -- it would just cost too much to open up another account.
- 2 But I didn't -- I didn't understand what that meant about the
- 3 cost would be so great. But I told him it was a requirement of
- 4 the grant that we had to have a separate account.
- 5 Q. And was a separate account eventually opened?
- 6 A. Yes.
- 7 Q. Mr. Gerfein, when you accepted the job at CASI as business
- 8 manager, what was your understanding about who would have the
- 9 authority to sign checks for the company?
- 10 A. Our initial discussions were that I was going to have sole
- 11 responsibility for signing checks. I told him that, look,
- 12 that's okay, but this is your company and really there should
- 13 be dual signature requirement for most checks. And we agreed
- 14 that there would be dual signature responsibility, but anything
- under \$250 could be signed by one person.
- 16 Q. Is this in fact that arrangement you just described, is
- 17 that in fact what happened after the grant was awarded?
- 18 A. No.
- 19 Q. How did it work in practice after the grant was awarded?
- 20 A. Within one week exactly on October 11th, Dr. Karron sent a
- 21 note to Hope Snowden saying that, while I had administrative
- 22 responsibility, I had no signature or officer responsibility at
- 23 CASI.
- Q. And what did you understand that to mean?
- 25 A. That means that I was stripped of my ability to control the SOUTHERN DISTRICT REPORTERS, P.C.

- 1 business as I was told I would have.
- 2 Q. Take a look at Government's exhibit 21 in the other folder
- 3 in front of you. Could we display that on the screen, page
- 4 three. It's also in the jury binders.
- 5 A. Uh-huh. Yes.
- 6 Q. You see that document?
- 7 THE COURT: It's a little hard to see, but can you
- 8 read it?
- 9 THE WITNESS: Yes.
- 10 THE COURT: I can't, I can't read it.
- 11 THE WITNESS: Here's my copy.
- 12 THE DEPUTY CLERK: Judge, he has a copy.
- 13 THE COURT: All right. He was looking up there, so I
- 14 was --
- 15 Q. Actually, he, if you could blowup exactly what you blew up.
- Mr. Gerfein, do you see that document?
- 17 A. Yes.
- 18 Q. What is that document?
- 19 A. That document is the letter that Dr. Karron sent to Hope
- 20 Snowden dated October 11th, 2001 and indicating that I only had
- 21 the administrator responsibility, but not the signature
- 22 authority. And it says here, and is not authorized to sign for
- 23 the corporation.
- Q. Where do you see that?
- 25 A. From the third -- on the right side, third line from the SOUTHERN DISTRICT REPORTERS, P.C.

- 1 bottom.
- Q. And you see the final sentence which says, the
- 3 authorization for Mr. Gerfein to commit the corporation will be
- 4 made by separate letter authorization if the need arises?
- 5 A. Correct. I see that.
- 6 Q. Were you ever given signatory authority for the company
- 7 while you were working at CASI?
- 8 A. No.
- 9 Q. And what's the date on this letter?
- 10 A. I'm sorry?
- 11 Q. What's the date on this letter?
- 12 A. The date on the letter above, October 11th -- right there,
- 13 yeah.
- 14 Q. And about how long after the grant was awarded was that
- 15 letter dated?
- 16 A. It's dated -- well the grant was -- notification of award
- was October 4th, and this letter is dated October 11th. So
- it's exactly one week after the notice of award.
- 19 Q. All right. Mr. Gerfein, did you have any further
- 20 discussions with the defendant about spending grant money after
- 21 that letter was submitted?
- 22 A. About spending grant money?
- Q. About particular expenditures?
- 24 A. Sure, I mean we discussed various things that -- I mean Dr.
- 25 Karron kind of liked equipment. I mean he --

- 1 Q. Why did you discuss the equipment discussions you had?
- 2 A. In particular, we discussed -- there were many items of
- 3 discussion, but we discussed some monitors that he bought that
- 4 were very expensive. I mean as monitors go, I think these
- 5 were, if I remember correctly, a couple thousand dollars a
- 6 piece. They were large, attractive, but I didn't think they
- 7 were necessary, and they were not part --
- 8 MR. RUBINSTEIN: Objection, move to strike.
- 9 A. They were not part of the grant.
- 10 MR. RUBINSTEIN: I move to strike what he thought.
- 11 THE WITNESS: I'm sorry.
- 12 THE COURT: Objection sustained, I guess.
- 13 Q. Are you --
- 14 THE COURT: As to what he thought. You said you
- 15 thought that you told him they were not part of the grant.
- 16 THE WITNESS: Yes, sir.
- 17 THE COURT: Go ahead, what. Did you tell him anything
- 18 else?
- 19 Q. I'm sorry, Mr. Gerfein, you mentioned monitors in
- 20 particular?
- 21 A. Right.
- 22 Q. Is there any other pieces of equipment?
- 23 A. They were not part of the grant. Also, the point they were
- 24 not part of approved grant.
- Q. All right, let's -- what, if any, discussions did you have SOUTHERN DISTRICT REPORTERS, P.C.

- 1 with defendant about these pieces of equipment not being part
- 2 of the grant?
- 3 A. Well, that, you know, he couldn't just buy anything he
- 4 wanted; that he had to do things that were part of the grant.
- 5 If he wanted to get something that was not part of the grant,
- 6 he would have to apply for a written approval. And his
- 7 response to me was I'm the PI, meaning I'm the principal
- 8 investigator, and I can do anything I want. I said, you can't
- 9 do anything you want. And that went on and on. That, that
- 10 interchange took place a number of times.
- 11 Q. Did you approve or disapprove yourself of these
- 12 expenditures?
- 13 MR. RUBINSTEIN: Objection, your Honor.
- 14 THE COURT: Objection sustained. As I understood it,
- 15 his testimony is that he didn't have approval authority after
- 16 October 11th.
- MR. EVERDELL: I'm sorry, your Honor, I just meant not
- 18 with respect to your approval, signatory authority, but did you
- 19 think that these expenditures --
- 20 THE COURT: The question is whether they came within
- 21 the grant or not, not whether he personally approved things.
- 22 This isn't a trial in connection with --
- 23 MR. EVERDELL: Certainly, your Honor.
- 24 THE COURT: -- personal approvals or disapprovals.
- Q. When you said that these were not part of the grant, these SOUTHERN DISTRICT REPORTERS, P.C.

865ZKAR5 Gurfein - direct

1 expenditures that you were talking to the defendant about, what

- 2 did you mean by that?
- 3 A. Well, we had included in our proposal various figures,
- 4 including figures for equipment, and the equipment was
- 5 delineated, and the items that we just talked about were not
- 6 included. And when those items were being purchased that were
- 7 not required by the grant, or not approved by the grant, I
- 8 should say, then they really should not have been bought.
- 9 Q. Did you discuss this with the defendant?
- 10 A. Yes, but --
- 11 Q. What was his response?
- 12 A. Well, first of all, it was always after the fact that I
- 13 found out that these things were bought, because I didn't have
- 14 anyway of stopping it. And so I'd come in there one day as an
- 15 example, and there would be this movie sized theater -- these
- 16 theater size movie screen going up, projection screen probably
- 17 as big as that, maybe bigger, don't know. And I said to him,
- 18 what is that all about? And he said, well, we need that. And
- 19 I said, for what? And I just didn't understand why we'd have
- 20 to spend another few thousand dollars when we --
- 21 MR. RUBINSTEIN: Objection to what -- his feelings.
- 22 THE COURT: The jury is instructed to disregard the
- 23 last three or four words. What the issue is that, was that
- 24 amongst the equipment that was delineated in the grant?
- 25 THE WITNESS: It is not. That equipment was not SOUTHERN DISTRICT REPORTERS, P.C.

865ZKAR5 Gurfein - direct

- 1 included in the grant.
- Q. What was the defendant's response when you would talk to
- 3 him about these non-delineated equipment pieces?
- 4 A. He said, we needed it.
- 5 Q. Do you know what funds were used to buy these items,
- 6 equipment?
- 7 A. The only funds we had were funds from NIST, ATP funds. So
- 8 there were no other funds that I knew about that came into the
- 9 company.
- 10 Q. How do you know the only funds you had were ATP funds?
- 11 A. Well, because I had been trying to get other funds and I
- 12 had not been successful in doing that.
- 13 THE COURT: Did you review -- were you in charge of
- 14 the books and records?
- 15 THE WITNESS: Essentially not. I mean, I should have
- 16 been, but I had no control over it.
- 17 THE COURT: What about the bank account?
- 18 THE WITNESS: Same.
- 19 THE COURT: You didn't --
- 20 THE WITNESS: I had no control over it.
- 21 THE COURT: You didn't review the bank accounts?
- 22 THE WITNESS: I did, but I had no control over it.
- 23 Q. Did you have any discussions with the defendant on the
- 24 subject of fringe benefits for medical expenses?
- 25 A. Yes.

865ZKAR5 Gurfein - direct

- 1 O. And what were the nature of those discussions?
- 2 A. The nature of those discussions were that the, the figure
- 3 of 34 percent of an employee's gross salary was allowable for
- 4 medical and other expenses like that, fringe benefits. And Dr.
- 5 Karron was of the opinion that, because he told me so, that if
- 6 it was 34 percent of the total payroll, that would be okay.
- 7 Q. What do you mean, if it was 34 percent of the total?
- 8 A. If we did not exceed 34 percent of the entire payroll as
- 9 opposed to just 34 percent of each individual, that would be
- 10 okay. So that if one person had, say, 20 percent and one
- 11 person had 50 percent, the average would be like 35 percent or
- 12 something close to that, so that would be okay.
- 13 THE COURT: Did the company have a benefit plan? Did
- 14 the company have a benefit plan?
- 15 THE WITNESS: Not that I ever saw.
- 16 THE COURT: And how were fringe benefits administered?
- 17 THE WITNESS: They were very loosely arranged at that
- 18 time.
- 19 THE COURT: What do you mean by that?
- THE WITNESS: Well, there was, there was an assignment
- 21 given to an attorney to generate a benefit policy, but that
- 22 never happened while I was there.
- 23 THE COURT: But how -- you said they were loosely
- 24 administered. Someone had to document something like that.
- THE WITNESS: Right.

865ZKAR5 Gurfein - direct

- 1 THE COURT: What would happen?
- 2 THE WITNESS: Doctor's bill, if the person would have
- 3 insurance or the bill would be submitted, but basically the
- 4 company paid for insurance in my case.
- 5 THE COURT: Was there insurance; there was health
- 6 insurance?
- 7 THE WITNESS: There was no -- to my knowledge, there
- 8 might have been a policy, but I can't recall. I do know that
- 9 in my case it was handled a little bit differently, but still
- it was, there was no formal policy.
- 11 THE COURT: What did they do, pay them as the bills
- 12 came in?
- 13 THE WITNESS: I was covered by -- I was covered by an
- 14 insurance policy. I think Dr. Karron had one too. But I think
- there were other bills that he might have had, as I recall,
- that were paid possibly directly. I really don't know.
- 17 THE COURT: So that's what you mean by "loosely"
- 18 administered.
- 19 THE WITNESS: Yes.
- 20 THE COURT: I see.
- 21 BY MR. EVERDELL:
- 22 Q. Mr. Gerfein, did the defendant have any health expenditures
- 23 that you're aware about during this period you worked with
- 24 CASI?
- 25 A. Yes, he had -- I think he had a lot of health expenditures.

865ZKAR5 Gurfein - direct

1 In particular, I remember he had dental expenditures.

- Q. How do you know he had dental expenditures?
- 3 A. Well, often times he asked me to pick him up at the dentist
- 4 on my way into the office.
- 5 Q. And do you know what kind of dental procedures he was
- 6 having?
- 7 A. In particular, he had indicated that he had a jaw
- 8 reconstruction activity going on with the dentist.
- 9 Q. And did you have any sense about why the defendant was
- 10 having his jaw --
- 11 A. Based on his discussion with me, and some other people who
- 12 had such procedure, and that they were getting a sex change
- 13 operation, it became clear that that jaw reconstruction was for
- 14 a sex change operation.
- 15 Q. And just to repeat, did you see any written plan for the
- 16 employees at CASI for health benefits?
- 17 THE COURT: Wait. I don't understand. A dentist
- 18 can't -- doesn't do a sex change operation.
- 19 THE WITNESS: Correct; yes, sir.
- 20 THE COURT: You picked him up at the dentist.
- 21 THE WITNESS: Right, but --
- 22 THE COURT: So all you know is that he had dental
- expenses.
- 24 THE WITNESS: Right. But based on his descriptions he
- 25 made of some other people who he knew who had a similar

865ZKAR5 Gurfein - direct

- 1 procedure, and that was as the cosmetics for in contemplation
- of a sex change operation.
- 3 Q. All right. Mr. Gerfein, did you ever see a written plan in
- 4 place for CASI for health expenditures?
- 5 A. I did not.
- 6 Q. Mr. Gerfein, when you had discussions with the defendant
- 7 about spending, where would you have those conversations?
- 8 A. Well, typically we would leave the office, which was
- 9 usually very noisy and poorly ventilated, and we'd go to a
- 10 coffee shop, one of several coffee shops across the street.
- 11 Q. And when you had meetings with the defendant, would you
- schedule meetings or would you just show up?
- 13 A. Well, both. Sometimes I just show up and sometimes they
- 14 were scheduled.
- 15 Q. When you did schedule meetings, did the defendant always
- 16 attend your scheduled meetings?
- 17 A. Very often not.
- 18 Q. Can you expand on that?
- 19 A. Well, I would try to see him on various occasions having to
- 20 do with budgetary things and other matters, and sometimes I'd
- 21 show up at the appointed time, let's say 11:00 o'clock and he
- 22 was either sleeping or he's in the gym or whatever, but very
- often he was not there.
- 24 Q. You say he was sleeping; how do you know he's sleeping?
- 25 THE COURT: I don't see the relevance of whether he's SOUTHERN DISTRICT REPORTERS, P.C.

865ZKAR5 Gurfein - direct

1 sleeping or not, Mr. Everdell. You have to --

- 2 Q. As a --
- 3 MR. EVERDELL: Your Honor, if we could have a brief
- 4 sidebar?
- 5 THE COURT: If you got -- all right, go ahead then.
- 6 MR. EVERDELL: All right.
- 7 THE COURT: You got a relevant point, but I just
- 8 wanted to call your attention to the possible lack of
- 9 relevance.
- 10 Q. How, if anything, did this, did these -- did the
- 11 defendant's work habits impact your work?
- MR. RUBINSTEIN: Objection, your Honor.
- 13 THE WITNESS: Very often it was difficult to --
- MR. RUBINSTEIN: I have an objection.
- 15 THE COURT: I will allow the question.
- 16 Q. How, if any --
- 17 A. Well, very often I would try to meet with him and -- well,
- one time I had an appointment to see him on a Sunday evening
- 19 'cause I could get his attention without interference, and I'd
- 20 show up and I wait for an hour, and he didn't show up.
- 21 Q. Do you ever have any discussions with Dr. Karron about his
- 22 work habits?
- 23 A. Yes, I did. I told him this is not just acceptable. I
- 24 used to get frustrated just showing up time and time again, and
- he'd be out doing what he was doing.

865ZKAR5

Gurfein - direct

- 1 Q. Mr. Gerfein do you know someone named Margaret Ferrand?
- 2 A. I know the name Margaret.
- 3 Q. Who is Margaret?
- 4 A. Margaret was a cleaning lady.
- 5 Q. And what did you -- oh, did you ever see her in the
- 6 apartment, Margaret?
- 7 A. Sure.
- 8 Q. How often?
- 9 A. I would guess once a week, but I'm not really sure.
- 10 Q. And what was she doing when you saw her in the apartment?
- 11 A. She'd be cleaning dishes or toilets or, you know, whatever;
- dusting, whatever a cleaning lady does.
- 13 Q. Did you ever see Margaret doing any office work, aside from
- 14 cleaning, while you were there?
- 15 A. Not when I was there.
- MR. EVERDELL: One moment, your Honor.
- 17 Q. Mr. Gerfein, when did you terminate your employment at
- 18 CASI?
- 19 A. I terminated my employment September 30th, 2002.
- 20 Q. Why did you leave after only one year?
- 21 A. Well, Dr. Karron said he couldn't afford to pay me the
- 22 hundred thousand dollars a year. And he asked if I would stay
- on at \$50,000 a year. And it didn't take much time for me to
- 24 know that I wouldn't stay there either way, at 100 or 50,
- 25 because my mental health was more valuable than being part of SOUTHERN DISTRICT REPORTERS, P.C.

- 1 that operation.
- 2 MR. EVERDELL: Thank you. No further questions.
- 3 THE COURT: Mr. Rubinstein.
- 4 MR. RUBINSTEIN: Thank you, your Honor.
- 5 CROSS EXAMINATION
- 6 BY MR. RUBINSTEIN:
- 7 Q. In fact, Mr. Gurfein, you had a contract, did you not?
- 8 A. I did.
- 9 Q. And your contract was for one year, correct?
- 10 A. Correct.
- 11 Q. And at the end of the year were you offered a renewal of
- 12 that contract?
- 13 A. No.
- 14 Q. You were a member of the board of directors, were you not?
- 15 A. For one month.
- 16 O. And --
- 17 A. Approximately.
- 18 Q. Was that the first month?
- 19 A. That was -- no. It was sometime between July and August,
- 20 something like that.
- 21 Q. July and August of 2002?
- 22 A. Correct.
- Q. And were you an officer in the corporation?
- 24 A. For about that one month. I was made an officer of the
- 25 corporation without my being told in advance, and I resigned

865ZKAR5 Gurfein - cross

- 1 that within a month, roughly, of the time that I had that,
- while I that maintained my position as the business manager.
- 3 Q. You resigned as member of the board, correct?
- 4 A. Yes.
- 5 Q. Who else was on the board?
- 6 A. Dr. Karron, I think there was a Mr. Bernstein I believe who
- 7 was an attorney, there was Abe Karron, who was Dr. Karron's
- 8 brother. There were, there probably was one other person, I
- 9 think possibly Frederica Miller attorney. I'm not sure. She
- 10 might have been a member of the board as well.
- 11 Q. And these -- did you attend any board meetings?
- 12 A. That one. Oh, as a director or as a visitor?
- 13 Q. At any time?
- 14 A. I think I attended two board meetings in total, if I
- 15 remember correctly.
- 16 Q. And where were the board meetings held?
- 17 A. They were held at the office of Mr. Bernstein.
- 18 Q. And what time of day or night?
- 19 A. I think probably in the evening.
- 20 Q. And you, when you worked at CASI, what were your work
- 21 hours?
- 22 A. The work hours were pretty variable. They were up to me.
- 23 And some days I worked at CASI's offices like three days a
- 24 week, maybe four, maybe two, and the rest of the time I worked
- 25 at home. But remember I was there on 75 percent of the time.

865ZKAR5 Gurfein - cross

1 Q. When you came to the office, how late would you stay on a

- 2 non-board member day?
- 3 A. It varied.
- 4 Q. Well, what was the latest that you ever stayed at the
- 5 office when you were the -- you were the chief operating
- 6 officer?
- 7 A. No, I was not.
- 8 Q. What was your title?
- 9 A. Business manager, I think.
- 10 Q. How late did you -- what's the latest you ever worked at
- 11 CASI the year as the business manager?
- 12 A. Probably midnight.
- 13 Q. And how often did you do that?
- 14 A. I don't remember.
- 15 Q. More than once?
- 16 A. Oh, sure.
- 17 Q. And you were asked to invest money in CASI, were you not?
- 18 A. I was.
- 19 Q. You were asked to invest money by Dr. Karron's brother, Abe
- 20 Karron, right?
- 21 A. It wasn't quite like you're saying.
- Q. Well, were you asked to invest \$50,000?
- 23 A. That's correct.
- Q. And when you were asked to invest, when was it?
- THE COURT: Could we have a date, Mr. Rubinstein?

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865ZKAR5 Gurfein - cross

- 1 Q. Was that early on --
- 2 A. Yes.
- 4 A. Correct.
- 5 Q. It was prior to the time that the letter was generated to
- 6 Marilyn Goldstein limiting your functions?
- 7 A. No, it was after that.
- 8 Q. When was it?
- 9 A. I don't know the date, but it was after that.
- 10 Q. Were you a signatory at one time on the checking accounts?
- 11 A. Was I a signatory on the checking account? Did I sign
- 12 paper, documents at Chase to do that at some point? I think I
- 13 did. Did I ever sign a check? No.
- 14 Q. How were the checks created?
- 15 A. How were they created?
- 16 Q. Yeah. You got paid, didn't you?
- 17 A. Yes.
- 18 Q. Paid every week, correct?
- 19 A. No.
- 20 Q. Got paid every two weeks?
- 21 A. No.
- 22 Q. How often you get paid?
- 23 A. Once a month.
- Q. Each month?
- 25 A. Each month.

865ZKAR5 Gurfein - cross

- 1 Q. Now, you told us about Dr. Karron in the first month of the
- grant he took \$75,000 for as a loan for his personal use,
- 3 correct?
- 4 A. Correct.
- 5 Q. Now, he was earning \$175,000 for the year, correct?
- 6 A. Correct.
- 7 Q. And that comes out to about \$14,000 and change a month?
- 8 A. Correct.
- 9 Q. Did you know if Dr. Karron took a check, a paycheck in
- 10 November of 2001?
- 11 A. I don't know.
- 12 Q. Do you know if he took a paycheck in December of 2001?
- 13 A. I don't know.
- 14 Q. Do you know if he got a paycheck in January of 2002?
- 15 A. I don't remember that.
- 16 Q. Isn't it a fact that the first paycheck that Dr. Karron got
- 17 was in May of 2002?
- 18 A. I don't know that.
- 19 Q. Well, as the --
- 20 THE COURT: The jury is to draw no inferences.
- 21 Questions only are what is the evidence before you. Don't draw
- 22 any inferences from the question.
- 23 Q. Now, there were a number of people who worked at CASI on
- this project, were there not?
- 25 A. Several, yes.

865ZKAR5 Gurfein - cross

- 1 Q. And what was the original budget for salaries?
- 2 A. For what?
- 3 Q. For salaries, for total salaries?
- 4 A. I don't remember. I don't recall that offhand.
- 5 Q. Let me show you an exhibit to see if it refreshes your
- 6 recollection?
- 7 THE COURT: What exhibit?
- 8 Q. Okay. After the initial budget was submitted, was there an
- 9 amendment, a request for an amendment to the budget submitted?
- 10 A. I'm sorry, could you repeat that?
- 11 Q. Yeah. After the initial budget was submitted, you
- 12 submitted a budget before you received the funds, correct?
- 13 A. Yes.
- 14 Q. And that was to get \$800,000 the first year, correct?
- 15 A. Correct.
- 16 O. And after --
- 17 THE COURT: Total budget.
- 18 Q. For the first year?
- 19 A. I believe, I believe 800,000 sounds about right. It might
- 20 have been a little bit more.
- 21 THE COURT: Budget. We're not talking salaries at
- 22 this point. Budget.
- 23 MR. RUBINSTEIN: No, talking total budget.
- 24 A. Yes.
- Q. The first year. And then the total you told us was for the SOUTHERN DISTRICT REPORTERS, P.C.

865ZKAR5 Gurfein - cross

- 1 three years was about 2.1 million?
- 2 A. Correct.
- 3 O. Now, in October did you file for a budget amendment, a
- 4 revision early on?
- 5 A. Yes.
- 6 Q. And I turn your attention to exhibit -- do you have the
- 7 exhibits in front of you, sir? Is there a book with exhibits
- 8 there?
- 9 A. Which exhibit are you --
- 10 Q. I'm referring to exhibit 22.
- 11 A. I don't have such an exhibit.
- MR. EVERDELL: One moment, your Honor.
- MR. RUBINSTEIN: I'll give him my exhibit, your Honor.
- MR. EVERDELL: Here.
- 15 Q. Mr. Gerfein --
- 16 THE COURT: The witness has been handed exhibit 22.
- 17 Q. Did you review that, sir?
- 18 A. Which piece of paper are you asking me to look at?
- 19 O. The entire exhibit.
- 20 A. Okay. I, I have an idea what this is.
- 21 Q. Did you have discussions with people, either Hope Snowden
- or anybody at ATP about a revision in the budget?
- A. About a provision in the budget?
- Q. No, a revision?
- 25 A. Oh, yes. The chances are I did, although this was

SOUTHERN DISTRICT REPORTERS, P.C.

865ZKAR5 Gurfein - cross

- 1 submitted -- we did make a submission.
- 2 Q. And did you prepare the submission?
- 3 A. I believe I did. I can't be 100 percent sure. But if I
- 4 did it, I did it with the Dr. Karron. I mean, we certainly
- 5 discussed it.
- 6 Q. All right. And by looking at that document, does it
- 7 refresh your recollection as to what the budget was for the
- 8 first year?
- 9 A. Right. I see that.
- 10 Q. And there were submitted reasons for the request for
- 11 revisions, correct?
- 12 A. Yes.
- 13 Q. As a matter of fact, this was the second revision for
- 14 budget?
- 15 A. I don't recall that. I, I just don't recall which revision
- it was, if there was a first or second.
- Q. Do you recall submitting a revision to change your name
- 18 from Lee to Elisha?
- 19 A. If there was such changes, I do not remember it.
- 20 Q. Now, the salary -- did you understand, sir, as the business
- 21 manager, that you did not need approval if you changed a
- 22 category by 10 percent?
- 23 A. Within 10 percent.
- Q. Of the grant?
- 25 A. Yes.

1 Q. So that you could add \$80,000 to a category as long as you

- 2 took 80,000 away from that category, correct?
- 3 A. Um, that could be correct. I can't be sure 100 percent if
- 4 that's correct.
- 5 Q. Now, you told us that you had health insurance. You
- 6 actually had a contract, correct?
- 7 A. Yes.
- 8 Q. And did that provide for health benefits for you?
- 9 A. I think so, but I can't remember exactly. I don't have it
- 10 in front of me.
- 11 Q. Do you recall who the lawyer was who you mentioned was
- 12 contacted to develop a fringe benefit manual?
- 13 A. My best recollection --
- 14 THE COURT: Plan or manual?
- 15 Q. Plan or manual?
- 16 A. My best recollection was Frederica Miller.
- 17 Q. And do you know if Frederica Miller was paid anything to do
- 18 this work?
- 19 A. I have no idea.
- 20 Q. Now, in addition to the -- your wife had separate coverage,
- 21 did she not?
- 22 A. My wife had separate coverage, yes.
- 23 Q. And CASI reimbursed you for your wife's medical expense,
- 24 right?
- 25 A. Not our medical expense, our insurance.

865ZKAR5 Gurfein - cross

- 1 Q. What kind of insurance?
- 2 A. It was a group insurance, I think. It was our portion of
- 3 the group insurance.
- 4 Q. Group insurance covering what?
- 5 A. Covering medical.
- 6 Q. And were you also on the medical plan that CASI had for its
- 7 employees?
- 8 A. No.
- 9 THE COURT: Whose group medical were you talking
- 10 about?
- 11 THE WITNESS: My wife's medical. My wife was part of
- 12 a group, and so --
- 13 THE COURT: I see. Different, separate group?
- 14 THE WITNESS: Again, there was no -- I must make a
- 15 point. There was no policy, and Dr. Karron said, okay, we'll
- 16 just pay your medical insurance. And the way it was set up,
- that my wife would be covered under that as well.
- 18 Q. And there were fringe benefits provided for in your budget,
- 19 were there not?
- 20 A. Correct.
- 21 Q. And how much were the fringe benefits provided for in the
- 22 CASI budget?
- 23 A. I would have to look that up. I don't know that exactly.
- 24 The fringe benefits were probably 34 percent of the total
- 25 payroll. The payroll -- and that first year says here

- 1 \$325,000. So fringe benefits should have been 34 percent of
- whatever that number is, which should be something over
- 3 \$100,000, I think.
- 4 Q. And do you see on --so that was -- did you argue with Dr.
- 5 Karron as to whether or not you -- your wife should be
- 6 reimbursed for your medical insurance?
- 7 A. Argue? No, there was no argument. He -- there was never
- 8 an argument about that.
- 9 Q. Did you say to him, I don't think that's an allowable
- 10 fringe benefit?
- 11 A. No.
- 12 Q. Did you think it was allowable?
- 13 A. Based on the, the loose policy that he had established, it
- 14 was.
- 15 Q. What about ATP, did you think that his loose policy
- 16 violated the ATP --
- 17 A. I'm not sure how. If it was for me, within 34 percent of
- 18 my, of my gross pay, it was not violating, no.
- 19 Q. Was it -- did you know of any rule that suggested that the
- 20 fringe benefit amount was related to an individual's gross pay?
- 21 A. Yes.
- 22 O. Where, where is it that it's -- where is the document that
- 23 suggests that fringe benefits are in direct proportion to one's
- 24 salary?
- 25 A. As far as -- I remember reading that in the documents.

- 1 Q. You had that discussion with Dr. Karron, did you not?
- 2 A. Yes. Well, we discussed the subject in general, more with
- 3 respect to his requirements for medical than mine. I was way
- 4 within the 34 percent.
- 5 Q. And his view was that if you had fringe benefits for the
- 6 company, whatever was utilized, as long as it was a fringe
- 5 benefit, anybody could use it?
- 8 A. I don't understand your question.
- 9 Q. Did you have a discussion with Dr. Karron as to the use of
- 10 fringe benefits?
- 11 A. Yes.
- 12 Q. And didn't he advise you that it was his understanding that
- 13 fringe benefits -- that he could utilize up to whatever fringe
- 14 benefit money was not used by other employees that was
- 15 available for him?
- 16 A. He said that.
- 17 Q. And are you aware -- did you have anything to do with the
- 18 quarterly financial statements?
- 19 A. Yes.
- 20 Q. Did you help prepare them?
- 21 A. Yes.
- 22 Q. Where did you get the numbers from to put into the
- 23 quarterly financial statements?
- 24 A. Those numbers were the aggregate of what was in the monthly
- 25 applications for, for the various progress payments. That's SOUTHERN DISTRICT REPORTERS, P.C.

- 1 where these numbers came from.
- Q. Did they come from actual expenses?
- 3 A. No, they did not.
- 4 Q. And who determined that that was the proper numbers, those
- 5 were the proper numbers to use?
- 6 A. Well, the first time we went in after Dr. Karron withdrew
- 7 the \$75,000, and we had we had a discussion about that, about
- 8 how that \$75,000, for example, could be applied to direct -- on
- 9 the direct charges for the grant, which we couldn't possibly do
- 10 because it wasn't -- I mean that money was not spent on the
- 11 grant. So Dr. Karron said just, okay, make it that it works;
- 12 make sure that, you know, you don't raise any red flags and
- 13 just submit the numbers that will make it work. And that's
- 14 what we did.
- 15 Q. You are aware, sir, that Dr. Karron paid back that \$75,000
- in that first year; you're aware of that?
- 17 A. I am. But it caused us great pain to have that \$75,000
- 18 taken out, so at the end of every month we were down to almost
- 19 zero on the bank account.
- 20 Q. And whenever you got down to zero, Dr. Karron would put his
- own money into the company, correct?
- 22 A. I don't know that.
- Q. Well, how did you get above zero?
- 24 A. We got another progress payment.
- Q. Did you get a personal loan from CASI during this period?

 SOUTHERN DISTRICT REPORTERS, P.C.

- 1 A. Did I get a personal loan?
- 2 Q. Yes.
- 3 A. Not to my knowledge.
- 4 Q. Did you get a personal loan from Dr. Karron during this
- 5 period?
- 6 A. I don't remember that.
- 7 Q. You also had a telephone installed in your house related to
- 8 CASI business with the ATP grant, did you not?
- 9 A. Correct.
- 10 Q. And that telephone was paid for by CASI?
- 11 A. Correct.
- 12 Q. And you used that phone strictly for company business?
- 13 A. Correct.
- 14 Q. Did you have a credit card to use for CASI?
- 15 A. I don't recall if I had a credit card. If I did, it was
- 16 hardly used. In fact, I think I gave it back to him. If I had
- one, I gave it back to him.
- 18 Q. At what point?
- 19 A. Right away. I mean it was -- I, I, I can't remember the,
- 20 any credit card being of any substance.
- Q. Did you call anybody at ATP to report that Dr. Karron had
- 22 borrowed \$75,000?
- 23 A. I did not.
- Q. When you say that you were, the company was short money,
- there was \$800,000 deposited by early October or by the middle SOUTHERN DISTRICT REPORTERS, P.C.

865ZKAR5 Gurfein - cross

- 1 of October into an account for you to drawdown; is that
- 2 correct?
- 3 A. Incorrect.
- 4 Q. Where was the money that was given by ATP, the \$800,000,
- 5 how did that --
- 6 A. The \$800,000 came in pieces. The first piece was 150,000
- 7 and every month in the first year after that it was \$60,000.
- 8 We had to apply for that money each month.
- 9 Q. Are you aware that you could have applied for the first --
- in the first month for the whole \$800,000?
- 11 A. I was not aware of that.
- 12 Q. So if somebody from ATP had testified here at the trial,
- 13 you were unaware of that, correct?
- 14 A. I'm unaware of that.
- 15 Q. You were present at -- on November 8th, 2001 at what's
- 16 called a kickoff meeting?
- 17 A. Yes. Yes, I was.
- 18 Q. And you went over rules and regulations with the people --
- 19 A. Yes.
- 20 Q. -- at NIST?
- 21 A. Correct.
- 22 Q. And I think you told us that you met Mark Stanley there?
- 23 A. I think I shook hands with him at most.
- Q. And did Dr. Karron know Mark Stanley?
- 25 A. Yes.

865ZKAR5 Gurfein - cross

1 Q. And they had a cordial comfortable relationship?

- 2 MR. EVERDELL: Objection.
- 3 THE COURT: Do you know? Were you present? Do you
- 4 remember any of their meetings before the grant?
- 5 THE WITNESS: No, I was not.
- 6 Q. Well, did Dr. Karron or you discuss these, this agreement
- 7 agreements you had with him as to whether or not an expense,
- 8 was a proper NIST expense, you had a number of these discusses,
- 9 correct?
- 10 A. Yes.
- 11 Q. And did he advise you that he would get the approval
- 12 because NIST loved him and he bought items before he asked or
- 13 received approval from NIST?
- 14 A. I can't hear what you're saying.
- 15 Q. Did he tell you that --
- 16 THE COURT: You better get back to the microphone, Mr.
- 17 Rubinstein, because I couldn't hear half that question.
- 18 MR. RUBINSTEIN: Sorry.
- 19 Q. When you questioned the propriety of certain expenditures
- 20 by Dr. Karron, without prior approval, and in fact that Dr.
- 21 Karron told you that he would get approval because NIST loved
- 22 him?
- 23 A. Yes, he said that.
- Q. Did you bill a, and be reimbursed for parking while you
- were a CASI employee?

865ZKAR5 Gurfein - cross

- 1 A. Yes.
- Q. And did you also bill for travel?
- 3 A. For mileage you mean?
- 4 Q. Yes.
- 5 A. I don't recall the mileage. I recall I think parking at
- 6 the meter. Possibly tolls. I don't remember that. That's
- 7 possible. But I don't recall mileage, although that's possible
- 8 too.
- 9 Q. Do you recall receiving an e-mail from Dr. Karron
- 10 requesting that you repay certain expenses that were not
- 11 approved by ATP?
- 12 A. I don't recall such an e-mail.
- 13 (Continued on next page)
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- 15
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8657KAR6 Gurfein - cross

- 1 BY MR. RUBINSTEIN:
- Q. Let me show you this document and mark it as -- it's part
- of actually government's 3507-S, at page 27 of 28 pages.
- 4 THE COURT: 3507 what?
- 5 Q. Before you testified, did you have an opportunity, sir, to
- 6 go over e-mails that either you sent or that were sent to you?
- 7 A. No, not particularly, no.
- 8 Q. You are Elisha Gurfein and your e-mail address is
- 9 egurfein@earthlink.net, right?
- 10 A. Correct.
- 11 Q. Is that correct, sir?
- 12 A. Yes.
- 13 Q. I direct your attention to page 28.
- 14 A. Page 28?
- 15 Q. Take a look at this page here.
- THE COURT: Page what?
- 17 MR. RUBINSTEIN: It's page 27, your Honor, and 28.
- THE COURT: What's the date?
- 19 THE WITNESS: This e-mail was dated February 1, 2003.
- 20 I don't recall ever receiving this e-mail. This is more than
- 21 six months or so after I left. I don't remember seeing this
- 22 e-mail.
- THE COURT: Who is the e-mail from?
- MR. RUBINSTEIN: It's from Dr. Karron to Mr. Gurfein.
- 25 And I would offer this portion of Government's 3507-S.

8657KAR6 Gurfein - cross

1 MR. EVERDELL: Objection, your Honor.

- 2 THE COURT: Sorry?
- 3 MR. EVERDELL: Objection.
- 4 THE COURT: I didn't hear the statement.
- 5 MR. EVERDELL: He is offering the e-mail in evidence.
- 6 THE COURT: Objection sustained.
- 7 Q. Well, is it a fact, sir, while in the year you had worked
- 8 for CASI you had charged \$2,000 for parking?
- 9 A. I don't remember that number, no.
- 10 Q. Do you recall charging CASI \$1,589 for travel?
- 11 A. I don't recall that number either.
- 12 Q. Do you recall being asked by Dr. Karron to provide backup
- and justification for expenses that you had?
- 14 A. No.
- 15 Q. Now, there was, was there not, in the budget that we are
- 16 talking about, \$110,500 approved for fringe benefits, correct?
- 17 A. Show me where that is.
- 18 Q. Do you still have that Exhibit 22 in front of you?
- 19 A. Hold on. What page is that on here?
- 20 THE COURT: 22, it's the third page in what he is
- 21 asking about.
- 22 MR. RUBINSTEIN: Judge, I think, with all due respect,
- 23 the fourth page in.
- THE WITNESS: What page?
- MR. RUBINSTEIN: If you look on page 4, or on page 3

 SOUTHERN DISTRICT REPORTERS, P.C.

- 1 as the court said.
- THE WITNESS: I am looking for a figure of \$110,500.
- 3 I do not see that. Oh, yes, I do. Sorry, I do see it.
- 4 Q. Now, who was the accountant for CASI when you first started
- 5 working there?
- 6 A. Jill Feldman, I think.
- 7 Q. And did you have contact with her?
- 8 A. Brief.
- 9 Q. Was she replaced?
- 10 A. Yes.
- 11 Q. And who replaced her?
- 12 A. Joan Hayes.
- 13 Q. Approximately when was that?
- 14 A. It was later. I'm not sure exactly when Joan came into the
- 15 picture.
- 16 O. And what was her function as the accountant for CASI?
- 17 THE COURT: Which one? Hayes?
- MR. RUBINSTEIN: Hayes.
- 19 A. What was Hayes' function?
- 20 Q. Yeah. Did she work under you? You were the business
- 21 manager?
- 22 A. No, no. You have to remember all my authority was taken
- 23 from me by Dr. Karron. The idea that I had any authority over
- 24 anybody is just fallacious.
- 25 Q. That letter merely said that you couldn't sign checks,

- 1 right?
- 2 A. That's correct.
- 3 O. You were getting paid a gross salary of \$100,000 a year,
- 4 right?
- 5 A. Correct.
- 6 Q. And Joan Hayes was working there as an accountant, correct?
- 7 A. Correct.
- 8 Q. Did you see her when you went there to CASI?
- 9 A. Sure.
- 10 Q. How often -- you said you would be there like three days a
- 11 week?
- 12 A. The question is how often was she there when I was there.
- 13 That varied.
- 14 Q. How often would you see her?
- 15 A. She would be there during a certain time interval. I
- 16 remember seeing her there more often than others but that was
- 17 later on. She started showing up there later on, not early in
- 18 the project, not in the first year anyhow.
- 19 Q. Well, when you say the first year, you mean 2001.
- 20 A. Well, October 1, 2001 until September 30, 2002 when I was
- there. That's the first year of the grant.
- 22 Q. So, you did not see her often when you were --
- 23 A. Oh, I saw her very often towards the end of that period I
- just mentioned, but not at the beginning.
- 25 Q. Would you see her at all?

8657KAR6 Gurfein - cross

- 1 A. Sure.
- 2 Q. In the beginning?
- 3 A. She wasn't on in the beginning. Jill Feldman was on in the
- 4 beginning.
- 5 Q. Jill Feldman left early in 2002, did she not?
- 6 A. Yeah, I don't remember the exact date.
- 7 Q. Is it your understanding that Hayes had purchased Jill
- 8 Feldman's practice?
- 9 MR. EVERDELL: Objection.
- 10 THE COURT: Sustained.
- 11 Q. Well, did you observe -- by the way, did you have access to
- the computer at CASI?
- 13 A. Did I have access to it?
- 14 Q. Right.
- 15 A. What does that mean?
- MR. EVERDELL: Objection.
- 17 Q. Could you use the computer at CASI?
- 18 A. Yeah, sure.
- 19 Q. Were you aware that --
- 20 THE COURT: You are talking about the business
- 21 computer?
- MR. RUBINSTEIN: Yes.
- 23 Q. Were you aware that they had a program, software program
- 24 called Quick Books, installed?
- 25 A. Yes.

8657KAR6 Gurfein - cross

1 Q. And are you aware that that was purchased prior to October

- 2 1, 2001, with funds of Dr. Karron?
- 3 A. I did not know that.
- 4 Q. But you knew it when you were working there that this Quick
- 5 Book system was in effect.
- 6 A. Yes.
- 7 Q. And also were you aware that there was a program in effect
- 8 to scan all documents into that same computer system?
- 9 A. Yes.
- 10 Q. Did you participate in scanning documents into --
- 11 A. No.
- 12 Q. Did you participate in that Quick Book system generating
- 13 its own checks?
- 14 A. No.
- 15 Q. Did it?
- 16 A. That it generated its own checks? Did I take part in that?
- 17 No.
- 18 Q. No, no, but did the system generate a check?
- 19 A. I'm sorry?
- 20 Q. The Quick Book system, did it generate checks?
- 21 A. I don't know that.
- 22 Q. Is it fair to say that Dr. Karron would have virtually
- every piece of paper that came into the CASI --
- MR. EVERDELL: Objection.
- 25 Q. -- grant scanned?

8657KAR6 Gurfein - cross

- 1 THE COURT: Objection sustained.
- Q. Well, who did you see scan documents into that computer
- 3 system?
- 4 A. Dr. Karron for the most part, and maybe some other people.
- 5 Q. Well, Margaret Ferrand, did you see her scan anything?
- 6 A. No.
- 7 Q. As a matter of fact, how many people were the maximum that
- 8 were working at CASI at 300 East 33rd Street at one time?
- 9 A. I can't say for sure at this point. Working for CASI on
- 10 the grant?
- 11 Q. Yes.
- 12 A. Well, various people came and left, so it's a little bit
- 13 hard to really know that number exactly. If you ask me how
- 14 many people would be present at any one time in that living
- 15 room? I would say probably maybe a maximum of six or seven at
- 16 the most. At most. But that was not the usual.
- 17 Q. But you could have as many as that.
- 18 A. That would be the absolute maximum, seven maybe, probably
- 19 less.
- 20 Q. Were there also volunteers that Dr. Karron had recruited to
- 21 work on this project?
- 22 A. I think he might have had a graduate student or two like
- that.
- 24 THE COURT: Would your six or seven include the
- volunteers, or are you excluding the volunteers?

8657KAR6 Gurfein - cross

- 1 THE WITNESS: I don't recall, your Honor, seeing a
- 2 group more than -- except when there was a site review with
- 3 people from NIST, I don't recall seeing more than half a dozen
- 4 people, maybe seven, at any one time.
- 5 Q. How about -- was Dr. Wolberg there?
- 6 A. Rarely.
- 7 Q. Was Jim Cox there?
- 8 A. Yes.
- 9 O. Was Matt Rothman there?
- 10 A. Yes.
- 11 Q. Scott Albin?
- 12 A. Scott Albin? Yes, but not all at the same time.
- 13 Q. And you said there was a living room. Was there any living
- 14 room furniture in there?
- 15 A. De minimis.
- 16 Q. In fact it was basically a computer lab, correct?
- 17 A. For the most part, correct.
- 18 Q. Let me show you what has been marked as BBB for
- 19 identification and also marked CCC for identification. I show
- 20 you these two pages of photographs, and these are the letters.
- 21 Take a look at defendant's BBB for identification.
- 22 A. Yes.
- 23 Q. Tell me if you recognize what's depicted in those
- 24 photographs.
- 25 THE COURT: The question is: Is it a fair and SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR6 Gurfein - cross

- 1 accurate representation?
- THE WITNESS: Yes, this appears to be Dr. Karron's
- 3 living room as I remember it.
- 4 MR. RUBINSTEIN: I would offer BBB into evidence, your
- 5 Honor.
- 6 MR. EVERDELL: No objection.
- 7 THE COURT: BBB is admitted in evidence.
- 8 DEPUTY COURT CLERK: Judge, I think that's already in.
- 9 THE COURT: It is in evidence. I'm sorry.
- 10 MR. RUBINSTEIN: No, it wasn't. It was marked for
- 11 identification.
- 12 THE COURT: I think the government consented to it in
- 13 evidence. Go ahead.
- MR. RUBINSTEIN: CCC?
- 15 THE COURT: You had them up on the board, didn't we?
- 16 Aren't these the pictures we had up on the screen.
- MR. RUBINSTEIN: Oh, I'm sorry. She said she couldn't
- 18 testify about it, I think. Thank you, Robert. You're right.
- 19 I apologize.
- THE COURT: Go ahead.
- 21 Q. You recognize what the photographs are depicted in CCC?
- 22 A. Not all of the items I do recognize in CCC. I recognize --
- 23 MR. RUBINSTEIN: May I approach the witness?
- 24 A. I recognize the bathroom, not much else. I never saw this
- 25 sign. I don't remember this here. I remember this. I

1 remember this telephone situation in the bathroom, but I don't

- 2 remember anything else on this page.
- 3 O. Do you recall anything about Dr. Karron's room itself?
- 4 A. There were some computers in there.
- 5 Q. That's his bedroom.
- 6 A. Yes.
- 7 MR. RUBINSTEIN: Let me publish BBB for the jury.
- 8 Q. Now, starting, sir, at the top left as we look at this
- 9 exhibit, what portion of the area referred to as the living
- 10 room was this?
- 11 A. What does that mean?
- 12 Q. Well, do you see that large -- let me point to it -- I'm
- 13 pointing this at something shown on the right hand -- there are
- 14 six photographs, correct?
- 15 A. Yes.
- 16 Q. In this exhibit? This is on the right-hand side, the
- 17 middle photograph. Do you recognize what that is?
- 18 A. That looks like a screen, but I --
- 19 Q. How about down here on the lower right?
- 20 A. That looks like a screen.
- 21 Q. Was there a screen at that facility?
- 22 A. There was one installed while I was there.
- Q. And who installed it?
- 24 A. Abe Karron, to my knowledge. I saw him install it.
- Q. And that was a screen similar to the screen that we have SOUTHERN DISTRICT REPORTERS, P.C.

- 1 here. I mean --
- 2 A. Yes, for a room that's about one quarter the size or one
- 3 fifth the size.
- 4 Q. And there was also a projector similar to the projector
- 5 right over here, correct?
- 6 A. Probably was, yeah.
- 7 Q. Do you recognize this item that's in evidence as Government
- 8 Exhibit 123?
- 9 A. Well, not explicitly, but I could have seen it before.
- 10 Q. OK. Now, were you ever present when presentations were
- 11 made by the people at CASI on this ATP project?
- 12 A. Yes.
- 13 Q. And when presentations were made, was that screen utilized?
- 14 A. One time I was at such a presentation, yes.
- 15 Q. And who else was present?
- 16 A. Dr. Karron and a whole bunch of other people, including
- 17 Jayne Orthwein and B.J. Lide and some other people.
- 18 Q. Are you aware -- are you aware that Dr. Karron would go
- 19 sometimes to New Jersey to lecture and was called upon to
- 20 lecture on the ATP project?
- 21 A. New Jersey? Not to my knowledge.
- 22 Q. Anywhere.
- 23 A. If it happened, it was on no regular basis that I knew
- about.
- Q. Now, going to the top picture on the left, do you see, are SOUTHERN DISTRICT REPORTERS, P.C.

- 1 those two computers?
- 2 A. Yes.
- 3 Q. And --
- 4 A. Well, they're monitors, anyhow.
- 5 Q. Monitors. And are those the monitors you discussed before,
- 6 the ones that cost --
- 7 A. I don't think so.
- 8 Q. And these, do you see those shelves?
- 9 A. Yes.
- 10 Q. Do you know who constructed those shelves?
- 11 A. No.
- 12 Q. Do you know what was contained on those shelves?
- 13 A. Oh, various books and records, I think.
- 14 Q. By the way, was there an installation of wiring done in
- 15 that room?
- 16 A. In the living room?
- 17 Q. Right.
- 18 A. An installation of wiring?
- 19 Q. Right.
- 20 A. Probably.
- 21 Q. Was there an increase in the air conditioning?
- 22 A. There certainly was.
- Q. It would get pretty hot in there, would it not?
- 24 A. It did.
- 25 Q. Between the computers and all the people?

SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR6 Gurfein - cross

- 1 A. Yes.
- Q. And was it messy in there?
- 3 A. Was it what?
- 4 Q. Messy.
- 5 MR. EVERDELL: Objection. Objection.
- 6 THE COURT: Objection sustained. I don't see the
- 7 relevance of that.
- 8 Q. Well, you testified --
- 9 THE COURT: Please go ahead. No speaking objections.
- 10 Ask another question.
- 11 Q. Do you know a person named Chris Wegner?
- 12 A. I met Chris Wegner.
- 13 Q. And are you aware that Chris Wegner was a former employee
- of CASI?
- 15 A. I do.
- 16 Q. And are you aware that when Chris Wegner was an employee of
- 17 CASI prior -- withdrawn -- that Chris Wegner had surgery
- 18 performed and was paid for by CASI?
- 19 A. That's possible, yes.
- 20 THE COURT: Was this during the grant period or not in
- 21 the grant period? We're talking about the grant period,
- 22 Mr. Rubinstein.
- 23 Mr. Gurfein, are we talking about the grant period?
- 24 THE WITNESS: I don't know when that was paid for, but
- 25 I don't think it was paid for during the grant period.

8657KAR6 Gurfein - cross

- 1 Q. But it was customary for CASI before they got the grant to
- 2 have these -- to pay for employee's benefits, right?
- 3 MR. EVERDELL: Objection.
- 4 THE COURT: You weren't connected with CASI until the
- 5 time -- you don't have knowledge of anything --
- 6 THE WITNESS: No. I have knowledge, but I think it
- 7 was prior to my being with CASI.
- 8 THE COURT: But you don't have knowledge of anything
- 9 that happened before you. You don't have personal knowledge of
- 10 anything that happened before you were at CASI.
- 11 THE WITNESS: Correct.
- 12 THE COURT: Do you have knowledge of this?
- 13 THE WITNESS: Dr. --
- 14 THE COURT: Personal knowledge.
- 15 THE WITNESS: Dr. Karron told me that --
- 16 THE COURT: No, all right. That's hearsay.
- 17 O. When you were discussing with Dr. Karron the medical
- 18 expenses that you testified to before, did Dr. Karron in
- 19 response tell you anything about the policies of his company?
- 20 A. He said to me that in the case of Chris Wegner he got I
- 21 think it was \$10,000 from some other funds other than NIST
- 22 funds to pay for that surgery. That's what he told me.
- 23 Q. Did he tell you what his policy was for employees and
- fringe benefits and health benefits prior to getting the grant?
- 25 A. Prior to getting the grant?

8657KAR6 Gurfein - cross

- 1 Q. Right.
- 2 A. No, he didn't tell me what the policy was prior to getting
- 3 the grant.
- Q. Did you ever ask him if he ever charged any -- what kind of
- 5 fringe benefits he was accustomed to paying prior to getting
- 6 the grant?
- 7 A. In the most general way I know that his policy unwritten
- 8 was very loose.
- 9 Q. Now, were you involved in the hiring of Joan Hayes?
- 10 A. No.
- 11 Q. Did you have dealings with her involving any financial
- 12 documents?
- 13 A. Yes.
- 14 Q. Which financial documents were those?
- 15 A. I don't remember.
- 16 Q. You filed I believe the quarterly financial statements?
- 17 A. Yes.
- 18 Q. And did Ms. Hayes provide any of the figures that you
- incorporated in those filings?
- 20 A. I don't think so. It's possible, but I don't recall that.
- 21 THE COURT: Where did you get the figures?
- 22 THE WITNESS: Well, basically the figures were not
- 23 representative of what was actually spent but representative of
- 24 what was received from NIST.
- 25 THE COURT: So where did you get the figures?

SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR6 Gurfein - cross

1 THE WITNESS: Well, the figures for the quarterly

- 2 reports were basically a summation of data in the applications
- 3 made for the prior three months to NIST for the progress
- 4 payments, where we had to report what was done in the prior
- 5 month.
- 6 THE COURT: Where would you get those figures?
- 7 THE WITNESS: Well, those figures would again be
- 8 gotten from essentially from what we received as opposed to
- 9 having the correct figures, which would have been what was
- 10 actually spent directly on the project.
- 11 THE COURT: Well, what you received was \$150,000 and
- 12 then monthly payments of --
- 13 THE WITNESS: -- 60,000.
- 14 THE COURT: -- 60 or 65.
- THE WITNESS: 60.
- 16 THE COURT: So those don't tell you the break-down.
- 17 THE WITNESS: No.
- 18 THE COURT: Does the quarterly report show a
- 19 break-down?
- 20 THE WITNESS: No, no break-down of the quarterly
- 21 report.
- 22 THE COURT: Let me see a quarterly report.
- 23 MR. EVERDELL: Your Honor, Government Exhibit 40 for
- example.
- 25 THE COURT: He has one. He has handed me one.

SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR6 Gurfein - cross

1 Exhibit 21, the cover page. I see. But this isn't one that

- 2 was filed by you. This is an amendment to the financial
- 3 assistance report.
- 4 THE WITNESS: I apologize.
- 5 MR. EVERDELL: Your Honor, I think this is one.
- 6 THE WITNESS: I'm sorry. Wrong item.
- 7 THE COURT: Here is one, Government Exhibit 40. That
- 8 was allegedly filed January 10, 2002. And this shows the total
- 9 amount received and the total amount contributed by CASI --
- 10 THE WITNESS: Correct.
- 11 THE COURT: -- to this award. The total amount of
- 12 funds received in that quarter and the total contribution
- 13 allegedly made by CASI.
- 14 THE WITNESS: Correct.
- 15 THE COURT: Where did you get the figure for the
- 16 amount that CASI contributed?
- 17 THE WITNESS: Well, CASI didn't contribute anything.
- 18 These numbers were backed into essentially to make it look
- 19 right, because that's what I was told to do.
- THE COURT: By whom?
- 21 THE WITNESS: By Dr. Karron.
- 22 THE COURT: That's true for the next quarter and next
- 23 quarter? Did you file a next quarter?
- 24 THE WITNESS: I filed for the first quarter, the
- 25 second quarter, the third quarter. The fourth quarter I don't SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR6 Gurfein - cross

- 1 recall filing because I was not there anymore.
- 2 THE COURT: And they were done on all three quarters
- 3 in the same fashion?
- 4 THE WITNESS: Yes.
- 5 Q. Now, you were at CASI, were you not, in April of 2002,
- 6 correct?
- 7 A. Yes.
- 8 Q. And are you aware that an amended financial status report
- 9 was filed in April of 2002?
- 10 A. I'm not sure I remember that.
- 11 Q. Let me show you what's in evidence as Government Exhibit
- 12 2000. And I will leave 2001 up there.
- 13 THE COURT: 2000 and 2001.
- 14 Q. Do you want to review those documents, sir?
- 15 A. Yes.
- 16 Q. Do you recognize those documents?
- 17 A. Well, yes.
- 18 Q. And did you file those documents?
- 19 A. No, Dr. Karron filed them.
- 20 Q. And did you assist him in preparing them?
- 21 A. Yes.
- Q. And did Joan Hayes assist in preparing them?
- 23 A. I don't remember that.
- Q. Well, do you recall that you were attempting to get a
- 25 budget revision in November of 2001, December 2001?

8657KAR6 Gurfein - cross

- 1 A. A budget --
- 2 Q. -- revision.
- 3 A. Yes.
- 4 Q. And you were talking to Hope Snowden about it?
- 5 A. Yes.
- 6 Q. And Hope Snowden at some time suggested you call Jayne
- 7 Orthwein to discuss the changes?
- 8 A. I frankly don't recall that, but it's possible.
- 9 Q. Well, let me show you --
- 10 THE COURT: We don't want it's possible. You either
- 11 recall it or you don't recall it.
- 12 THE WITNESS: I don't recall it.
- 13 THE COURT: Anything is possible.
- 14 Q. Let me show you what's marked for identification as
- 15 Defendant's DDD.
- 16 DEPUTY COURT CLERK: Defendant's BBB?
- 17 MR. RUBINSTEIN: D, dog dog dog. See if this
- 18 refreshes your recollection, sir.
- 19 MR. KWOK: May I see it?
- 20 THE WITNESS: Now that I read it, I frankly don't
- 21 recall it that well, but, yes, I see it and --
- 22 THE COURT: No, just what you recall. It's only being
- 23 shown to you if it refreshes your recollection. Don't read the
- 24 document into the record. If it refreshes your recollection,
- 25 say yes it does refresh your recollection.

8657KAR6 Gurfein - cross

- 1 THE WITNESS: It does not. I don't recall this.
- Q. That is an e-mail that was sent from you to Dr. Karron, was
- 3 it not, on December 7, 2001?
- 4 MR. EVERDELL: Objection, your Honor. He said it
- 5 doesn't refresh his recollection.
- 6 MR. RUBINSTEIN: Well then I'm offering it into
- 7 evidence.
- 8 THE COURT: Well, wait a minutes. December 7 -- he
- 9 can't read it until it's admitted into evidence in the first
- 10 place.
- 11 MR. RUBINSTEIN: Correct.
- 12 THE COURT: But what you showed him was something that
- 13 was submitted sometime in April, and now you are talking about
- 14 December. There is no relationship in the dates of your
- 15 questions.
- MR. RUBINSTEIN: I think there is, Judge.
- 17 THE COURT: Well, you may think there is, but this way
- 18 precedes the date you were inquiring about by more than three
- 19 months.
- 20 MR. RUBINSTEIN: Judge, this is an e-mail sent by this
- 21 witness.
- 22 THE COURT: Look, it may be, but you told me the date.
- 23 Now, I don't want to hear a speaking objection. Bring it over
- 24 here to the side. There is an objection about it, let's get it
- 25 cleared up.

	8657KAR6			Gui	rfein -	cross	
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SOUTHERN DISTRICT REPORTERS, P.C.

- 1 (At the sidebar)
- 2 MR. EVERDELL: This is the document, your Honor.
- 3 THE COURT: I have no idea.
- 4 MR. EVERDELL: The defense counsel is using this to
- 5 try to refresh the witness's recollection. He hasn't had his
- 6 recollection refreshed, so it can't be used for that purpose
- 7 any more. He can't admit it in evidence because he doesn't
- 8 recognize the e-mail. There is no way to admit this into
- 9 evidence.
- 10 MR. RUBINSTEIN: He does recognize the e-mail account.
- 11 It's his account.
- 12 MR. EVERDELL: He says he doesn't remember it.
- 13 MR. RUBINSTEIN: No, he doesn't remember this
- document, this e-mail.
- 15 THE COURT: He doesn't remember it, and he has
- 16 admitted already that he attempted to go above Hope Snowden on
- one occasion to get an approval.
- 18 MR. RUBINSTEIN: Right. And, Judge --
- 19 THE COURT: He has already testified to that. This
- 20 doesn't add a thing.
- 21 MR. RUBINSTEIN: Judge, the fact of the matter is that
- 22 there is an entire line coming from Hope Snowden of these
- 23 negotiations, all the while she kept asking for revisions.
- 24 THE COURT: He has already testified about that.
- MR. RUBINSTEIN: No, he didn't.

SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR6 Gurfein - cross THE COURT: Yes, he did testify about it, Mr. Rubinstein. Now, how much longer are you going to be? MR. RUBINSTEIN: Probably half hour, 45 minutes. MR. EVERDELL: Your Honor, my direct was how long? THE COURT: Well. Sorry, we will have to go on a little while longer. (Continued on next page)

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 (In open court)
- 2 MR. RUBINSTEIN: You do remember attempting to get a
- 3 budget revision near the end of 2001?
- 4 MR. EVERDELL: Objection.
- 5 THE COURT: He has already testified about that. He
- 6 said yes he did try to get them. He said that several times.
- 7 That's the court's recollection. It's the jury's
- 8 recollection that governs.
- 9 Q. How many budget revisions were submitted between December
- 10 2001 and February 2002?
- 11 A. I don't remember.
- 12 Q. You do recall Hope Snowden -- having conversations with
- 13 Hope Snowden, correct?
- 14 A. Yes.
- 15 Q. And you recall her asking you or CASI to submit revised
- 16 budget requests?
- 17 A. Well, we discussed changes in the budget, yes.
- 18 Q. And do you recall preparing or participating in the
- 19 preparation of revised budget?
- 20 A. Yes.
- Q. And did you consult with Joan Hayes as to the figures, the
- 22 actual figures that were expended by CASI during the grant
- 23 period?
- A. At which point?
- Q. While you were negotiating with Hope Snowden to get a SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR6 Gurfein - cross

- 1 revised budget.
- 2 A. At which point?
- 3 MR. EVERDELL: Objection.
- 4 Q. Well, at what point were you negotiating with Hope Snowden?
- 5 A. I don't recall explicitly, but it was early on.
- 6 Q. At what point in your negotiation did you consult with Joan
- 7 Hayes about what numbers were to be utilized?
- 8 THE COURT: If you did.
- 9 THE WITNESS: I don't recall consulting with Joan
- 10 Hayes.
- 11 Q. Now, you had testified before that there were a number of
- 12 lawyers associated with CASI?
- 13 A. Yes.
- 14 Q. And you said there was a Mr. Bernstein?
- 15 A. Yes.
- 16 O. You said there was a Ms. Miller?
- 17 A. Yes.
- 18 Q. And were there other attorneys?
- 19 A. Those are the only ones I remember.
- MR. EVERDELL: Objection.
- 21 THE COURT: Those are the only ones he remembers.
- 22 Q. Did you ever discuss with any of those attorneys about the
- 23 expenses that Dr. Karron was charging towards the NIST budget?
- MR. EVERDELL: Objection, relevance.
- 25 THE COURT: I will allow the question.

SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR6 Gurfein - cross

- 1 A. I don't recall those discussions on that point.
- Q. Did you ever talk to Hope Snowden or anybody at ATP as to
- 3 any specific expense that Dr. Karron was charging to NIST?
- 4 A. What kind of expense?
- 5 Q. Any kind of expense.
- 6 A. That's very broad. I'm trying to --
- 7 THE COURT: Did you ever tell him that he was spending
- 8 money that was not provided for in the budget and attributing
- 9 it to NIST?
- 10 THE WITNESS: I don't recall that conversation.
- 11 Q. As a matter of fact, Joan Hayes was Dr. Karron's personal
- 12 accountant, was she not?
- 13 A. I don't know that either. I didn't know that.
- 14 Q. Are you aware of whether or not Joan Hayes prepared Dr.
- 15 Karron's personal tax returns --
- MR. EVERDELL: Objection.
- 17 Q. -- for '99, 2000 and 2001?
- 18 MR. EVERDELL: Objection.
- 19 A. I don't know that.
- THE COURT: He doesn't know that.
- 21 Q. Did you ever in your discussions with Dr. Karron about your
- 22 view of what was allowable and not allowable, tell him that if
- 23 he did it his way he could wind up in jail?
- 24 A. I told him that he can't do just anything he wanted to do
- like he thought he could. He thought he could spend the way he SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR6 Gurfein - cross

- 1 thought he could spend and not necessarily the way the rules
- 2 said he could spend.
- 3 O. Did you ever say to him, you know, I think you might be
- 4 committing a crime by doing what you're doing?
- 5 A. Maybe not in those words but along those lines.
- 6 MR. RUBINSTEIN: No further questions, your Honor.
- 7 THE COURT: Any redirect?
- 8 MR. EVERDELL: Five minutes, your Honor?
- 9 THE COURT: Five minutes, and that's it, no more.
- 10 REDIRECT EXAMINATION
- 11 BY MR. EVERDELL:
- 12 Q. All right. Mr. Gurfein, you testified on cross-examination
- about a conversation you had with defendant's brother Abe
- 14 Karron, is that correct?
- 15 A. Yes.
- 16 Q. That conversation related to a possible investment of
- 17 \$50,000 in the company?
- 18 A. Yes.
- 19 Q. Can you explain more broadly what the circumstances of that
- 20 conversation were?
- 21 A. This conversation was about my having the -- the
- 22 conversation was about the fact that my signature authority was
- 23 taken away, and I thought that was a mistake, and his response
- 24 was if you invest \$50,000 in the company you can have that
- 25 responsibility back. And I said I'm not investing \$50,000 into SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR6 Gurfein - redirect

- 1 this company, it is too risky.
- In fact this is the point to be made. One of the
- 3 reasons for getting the ATP grant in fact is because it is
- 4 given to risky ventures that have difficulty raising funds in
- 5 the private sector, and that's one of the purposes and one of
- 6 the criteria for getting the award. So, I told him no, and I
- 7 of course did not give the 50,000, nor did I get the signature
- 8 authority back.
- 9 O. You testified also on cross-examination about some
- 10 quarterly financial reports.
- 11 A. Yes.
- 12 Q. And I believe you testified that the defendant told you to
- make it work, is that correct?
- 14 A. That's correct.
- 15 Q. Who actually signed those financial reports that were
- 16 submitted?
- 17 A. Dr. Karron.
- 18 Q. Did you sign those financial reports?
- 19 A. I did not. I had no such authority.
- 20 THE COURT: Are you aware of any contributions to the
- 21 capital of CASI that were made by anyone other than NIST?
- 22 THE WITNESS: No, I'm not aware of any such
- 23 contributions.
- Q. You were also asked about a screen in the defendant's
- 25 apartment, is that correct?

8657KAR6 Gurfein - redirect

- 1 A. Yes.
- Q. You said you recalled when that was installed?
- 3 A. Yes.
- 4 Q. Do you recall how much was paid for the installation?
- 5 A. I think Abe Karron was paid \$3,000 roughly for that.
- 6 Q. And you said I believe on cross-examination in response to
- 7 questions about the defendant getting costs approved, that he
- 8 would be able to do it because NIST loved him?
- 9 A. Yes.
- 10 Q. Did you ever have any conversation with the defendant along
- 11 those lines?
- 12 A. Yes, it was a constant refrain: They love me, they'll
- 13 approve it.
- 14 MR. EVERDELL: One moment. No further questions, your
- Honor.
- 16 THE COURT: Within the scope, Mr. Rubinstein.
- 17 MR. RUBINSTEIN: Yes.
- 18 RECROSS EXAMINATION
- 19 BY MR. RUBINSTEIN:
- 20 Q. Let me show you what is marked as Defendant's FFF for
- 21 identification and ask you, number one, if you recognize --
- MR. EVERDELL: Can I see it?
- 23 Q. -- the signatures on those documents.
- MR. EVERDELL: Can I see the document?
- THE COURT: You have to show it to the government

SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR6 Gurfein - recross

- 1 first.
- 2 MR. RUBINSTEIN: I am, your Honor.
- O. Do you recognize Dr. Karron's signature on those documents,
- 4 sir?
- I even have a copy for your Honor.
- 6 A. I recognize his signature on these documents, yes.
- 7 Q. And do you recognize the check -- the name on the check --
- 8 checks?
- 9 MR. EVERDELL: Your Honor, I'm going to object to
- 10 this. This is clearly going to be outside the scope of the
- 11 redirect.
- 12 MR. RUBINSTEIN: That's what they asked on redirect.
- 13 THE COURT: I asked it.
- MR. RUBINSTEIN: That counts too, Judge.
- 15 THE COURT: I did it. I opened that door. Go ahead.
- MR. RUBINSTEIN: Thank you.
- 17 A. Yes, I see them.
- 18 THE COURT: Had you ever seen them before?
- 19 THE WITNESS: No.
- 20 MR. RUBINSTEIN: We offer Defendant's FFF --
- MR. EVERDELL: Objection.
- MR. RUBINSTEIN: -- into evidence.
- 23 MR. EVERDELL: The witness has never seen them.
- THE COURT: He can't authenticate them.
- 25 MR. RUBINSTEIN: He has authenticated them.

SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR6 Gurfein - recross

1 THE COURT: He says they're Karron's signature, but he

- 2 has never seen them before.
- 3 Next question.
- 4 Q. You received personal checks from Dr. Karron, have you not?
- 5 MR. EVERDELL: Objection.
- 6 THE COURT: You're not going to be able to get them
- 7 in. If he has never seen these checks before, you cannot get
- 8 them in that way.
- 9 MR. RUBINSTEIN: Let me ask it this way.
- 10 Q. Does that refresh your recollection as to whether or not
- 11 you ever had a conversation with Dr. Karron about him loaning
- 12 CASI money during the grant period?
- 13 A. I do not recall that.
- 14 Q. By the way, the contract that you signed --
- MR. EVERDELL: Objection.
- 16 THE COURT: Objection sustained. That's outside the
- 17 scope.
- 18 MR. RUBINSTEIN: This is not outside, Judge. With all
- 19 due respect, can I ask the question?
- 20 THE COURT: The way you started it, you talked about
- 21 something that was not in the scope, so you better get it into
- the scope.
- 23 Q. When your authority was taken away in October of 2001, did
- you resign from CASI?
- 25 A. No.

8657KAR6 Gurfein - recross

- 1 MR. RUBINSTEIN: No further questions.
- 2 MR. EVERDELL: No further questions, your Honor.
- 3 THE COURT: All right.
- 4 Jury is excused until 9:30 tomorrow morning.
- 5 MR. RUBINSTEIN: Just one moment. Just one moment. I
- 6 just found something that I just want to --
- 7 THE COURT: Come on, we can't wait for this.
- 8 MR. RUBINSTEIN: I have one document. It's going to
- 9 come out of the computer right now.
- 10 BY MR. RUBINSTEIN:
- 11 Q. Isn't it a fact that Dr. Karron loaned you \$4,000 on July
- 12 3, 2002?
- MR. EVERDELL: Objection.
- 14 THE COURT: I will allow the question.
- 15 A. July 3, 2002?
- 16 O. Correct.
- 17 A. I don't remember that.
- 18 Q. I show you this document.
- 19 THE COURT: Does that refresh your recollection?
- 20 THE WITNESS: Yeah, a little bit, but I really don't
- 21 recall. I don't recall this or the reason for it.
- Oh, here is what it says. It says as a memo, "loan
- 23 against frozen salary." That's what it says.
- 24 THE COURT: Do you remember that?
- Q. So, you remember it now?

8657KAR6 Gurfein - recross

1 A. Well, yeah, a little bit better, yeah.

- 2 Q. Last question. That refreshes your recollection that in
- July 2002 Dr. Karron loaned you \$4,000, correct?
- 4 A. Correct.
- 5 THE COURT: How much?
- 6 THE WITNESS: \$4,000.
- 7 MR. RUBINSTEIN: No further questions.
- 8 THE COURT: All right.
- 9 MR. EVERDELL: No further questions, your Honor.
- 10 THE COURT: Excuse me?
- MR. EVERDELL: No further questions.
- 12 THE COURT: All right. The jury is excused. We will
- 13 see you at 9:30 tomorrow morning.
- (Continued on next page)

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SOUTHERN DISTRICT REPORTERS, P.C.

8657KAR6 Gurfein - recross

- 1 (Jury not present)
- 2 THE COURT: Now, we better be in here what time? Who
- 3 is your next witness?
- 4 MR. EVERDELL: Well, your Honor, we should probably
- 5 discuss --
- 6 MR. KWOK: I think, your Honor, tomorrow we will -- if
- 7 Mr. Rubinstein has further cross-examination of our prior
- 8 witness, Belinda Riley, we can proceed with that, and then the
- 9 government will call its next witness Frank Spring.
- 10 THE COURT: Frank who?
- MR. EVERDELL: Spring.
- 12 THE COURT: How many more witnesses have you got?
- 13 MR. EVERDELL: The continuation of Ms. Riley,
- 14 Mr. Spring and Bob Benedict. And I anticipate that Mr. Spring
- 15 and Bob Benedict will be a similar length as Mr. Gurfein. I
- 16 can't account for cross, but the direct will be a similar
- 17 length.
- 18 THE COURT: All right.
- 19 Do you have anything else to come before the court?
- MR. RUBINSTEIN: No, your Honor.
- MR. KWOK: No, your Honor.
- 22 THE COURT: All right. You better be in here at 9
- 23 o'clock if we have Ms. Riley. Oh, I have a telephone
- conference at nine, so make it 9:15 as usual.
- 25 (Trial adjourned to June 6, 2008 at 9:15 a.m.)

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	8667KAR1	
1	UNITED STATES DISTRICT COURT	
1	SOUTHERN DISTRICT OF NEW YORK	
2	x	
2		
3	UNITED STATES OF AMERICA,	New York, N.Y.
3		
4	v.	S2 07 CR 541 (RPP)
4		
5	DANIEL B. KARRON,	
5		
6	Defendant.	
6		
7	x	
7		
8		
8		June 6, 2008
9		9:15 a.m.
9		
10		
10	Before:	
11		
11	HON. ROBERT P. PATTER	RSON, JR.,
12		
12		District Judge
13		
13		

APPEARANCES

15	MICHA	AEL J. GARCIA
15		United States Attorney for the
16		Southern District of New York
16	BY:	STEVEN KWOK
17		CHRISTIAN EVERDELL
17		Assistant United States Attorneys
18		
18	RUBI	NSTEIN & COROZZO, LLP
19		Attorneys for Defendant
19	BY:	RONALD RUBINSTEIN
20		
20	Also	Present: Rachel Ondrik, U.S. Dept. of Commerce
21		Kirk Yamatani, U.S. Dept. of Commerce
22		
23		
24		
25		
		SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1

1 (Trial	resumed;	iurv	not	present)

- 2 THE COURT: Good morning. We have a note from a juror
- 3 received yesterday afternoon to Judge Patterson. "I'd like to
- 4 speak with you about my need to follow up with my medical
- 5 situation. Your time would be much appreciated. Thank you."
- 6 I think this is Juror 7, Christine Hull. My
- 7 recollection is that she did not have an appointment during
- 8 jury selection but was trying to get an appointment for medical
- 9 follow-up, and I suggested she try and do it after the
- 10 scheduled trial, but I don't know the nature of her medical
- 11 follow-up. Of course if it's a life-threatening disease, I
- 12 would have problems. So, I guess we better have her in here
- and listen to her, and I will decide accordingly.
- 14 We still have three jurors. If this case goes over
- 15 two weeks, we will probably lose Juror 1; and if it goes three
- 16 weeks, we lose Juror 8, the former alternate Juror 1. And who
- 17 knows what else.
- Now, how are we coming on trial? There are two
- 19 witnesses the government has, is that it?
- 20 MR. EVERDELL: Yes, your Honor. The government after
- 21 we finish with Ms. Riley has two more witnesses. As I think I
- 22 indicated yesterday, they are along the lines of Mr. Gurfein in
- 23 length. One witness has some e-mails that we need to introduce
- 24 through him. That's Frank Spring. So that may take a little
- longer just with the introduction of exhibits, but it would

8667KAR1

- 1 take -- roughly along the lines -- the direct at least will
- 2 take roughly along the lines of what it took for Mr. Gurfein.
- 3 THE COURT: Well, we have to make progress here.
- 4 Let me say something while that subject is up. I am
- 5 concerned that the government -- as I hear the evidence that's
- 6 coming in, I'm not sure that so far anyway the government has
- 7 shown an intentional misapplication of the funds of CASI.
- 8 Now, if you are talking about the grant funds, that's
- 9 another matter, you may have something with respect to
- 10 misapplication of grant funds. I don't know. I haven't heard
- 11 all of the evidence.
- 12 For instance, with respect to the screen, CASI got the
- 13 benefit of that screen. I don't think that can be considered a
- 14 misapplication of funds. And if the government is proceeding
- in that way, unless they show that the corporation didn't
- 16 benefit in any way by the purchase, I don't think it can be
- 17 considered a misapplication of CASI's general funds.
- 18 So, I don't know what the rest of the evidence is, but
- 19 I'd like to have a memorandum really by Monday morning
- 20 delineating, if you will, how you are going to go, because I
- 21 have to charge the jury. This is a very dicey situation if you
- 22 read cases in this area, because you have to have knowing
- 23 intent to misapply the funds, and it's virtually the same as
- 24 conversion. And I think the leading case is Morisette.
- But you ought to have something by Monday to show that SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1

- 1 I shouldn't throw this case out.
- 2 By the way, one of the defense exhibits for
- 3 identification was left here on the bench, FFF. Maybe it's
- 4 four Fs or three Fs. All right. Well, let me get this juror
- 5 in. Robert, can you ask Ms. Hull to come in.
- 6 How much longer do you think you are going to be with
- 7 Ms. Riley?
- 8 MR. RUBINSTEIN: Possibly most of the morning, your
- 9 Honor.
- 10 (Juror present)
- 11 THE COURT: Good morning, Ms. Hull. You said you
- wanted to talk to me about your doctor's situation.
- 13 JUROR: Actually for a couple of years I have been
- 14 dealing with several problems, and I have some brain lesions
- 15 that they're trying to diagnose whether it's MS or some other
- 16 problem going on. And then after I sent my reply back to the
- jury pool I got a result from a mammogram that I have
- 18 calcifications in one breast requiring biopsy. So I'm in the
- 19 process now of getting some specialist to look at that.
- 20 But this brain thing and the vestibular weakness is
- 21 causing me to be extremely tired. I get really exhausted, and
- 22 I felt yesterday I like zoned out almost like if I'm falling
- asleep or something during the process of witness examination.
- 24 THE COURT: I didn't notice it.
- 25 JUROR: You didn't? I was stunned.

SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1

- 1 THE COURT: I may have been carrying on.
- JUROR: There are just those issues going on, and I
- 3 feel very feel good about the process, but I don't know if I
- 4 can fulfill this. If I get an appointment to get the biopsy
- 5 done, I will have to get it taken care of.
- 6 THE COURT: Well, if you have to leave for the biopsy,
- 7 we will accommodate you.
- 8 JUROR: So, you don't see me kind of spacing out over
- 9 here or anything? Because I'm trying to pay attention, but
- 10 it's --
- 11 THE COURT: I think if you know you are going to be
- 12 excused if the biopsy appointment is made during the trial,
- 13 that you will be excused --
- JUROR: OK, I will try my best to hang in there.
- 15 THE COURT: -- maybe you will have an easier mind.
- 16 MR. RUBINSTEIN: Sounds good to me, your Honor.
- MR. KWOK: To the government as well.
- 18 THE COURT: All right. Thank you for being so frank
- 19 and bringing it to our attention. And if you need a break,
- just raise your hand and you can have a break.
- JUROR: I appreciate it, your Honor.
- 22 (Juror not present)
- 23 MR. RUBINSTEIN: We're short one defendant, your
- 24 Honor. I didn't pick him up this morning, because he promised
- 25 me he would be on time. I do want to say something about

8667KAR1

1	sleeping	jurors. I was on a jury, and the two hardest things
2	was stay	ing awake these seats are so comfortable you have no
3	idea.	
4		THE COURT: Are you sure it wasn't the judge?
5		MR. RUBINSTEIN: It wasn't the judge.
6		THE COURT: Sometimes it's the attorneys.
7		MR. RUBINSTEIN: It could have been. That could have
8	been.	
9		Judge, can I make the call to my client?
10		THE COURT: Sure.
11		(Continued on next page)
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8667KAR1

- 1 (Jury present)
- THE COURT: Good morning, ladies and gentlemen. Thank
- 3 you for being so prompt. All right, your next witness.
- 4 You're recalling Ms. Riley?
- 5 MR. KWOK: Yes, your Honor.
- 6 BELINDA RILEY, resumed.
- 7 THE COURT: You are reminded you are still under oath.
- 8 THE WITNESS: Yes.
- 9 THE COURT: And the jury is reminded I have to do that
- 10 as a matter of court procedure. OK, thank you. Continue your
- 11 cross.
- MR. RUBINSTEIN: Thank you, your Honor.
- 13 CROSS EXAMINATION (Continued)
- 14 BY MR. RUBINSTEIN:
- 15 Q. Ms. Riley, I believe when we suspended your testimony you
- 16 were looking for a record to refresh your recollection as to
- 17 Mr. Gurfein's salary.
- 18 A. I was looking for the record -- I thought I was looking for
- 19 the record for the grant, for the 75 percent, to show the
- 20 multiplication to determine the allowable portion of his
- 21 salary. Because the record you had had a hundred thousand
- 22 times 75 percent equaled a hundred thousand, and there was a
- 23 mathematical error. That should have said -- well, I think the
- one I found said 133 times 75 percent was a hundred thousand,
- which I didn't check, but it was to show that there was a SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1 Riley - cross

- 1 mathematical error on that document.
- Q. Mathematical error on what document?
- 3 A. The budget document that was showing 100,000 times 75 is a
- 4 100,000. Because 100,000 times 75 percent would be 75,000 not
- 5 100,000.
- 6 Q. Well, would \$133,333, compute 75 percent to that, would
- 7 that compute to 100,000?
- 8 A. I'm not sure. I was just trying to show that it was
- 9 incorrect for that, for the 100,000, that it wasn't -- it
- 10 should be a mathematical correct number. I didn't check the
- 11 other document.
- 12 Q. Well, are you aware that the budget was amended in this
- 13 case?
- 14 A. The budget was amended to show -- yes, the budget was
- 15 amended, but it didn't have -- but the amendment 2 didn't have
- 16 that particular attachment on it.
- 17 Q. Well, I show you what's been marked as Defendant's Exhibit
- 18 H, which is a portion of Government Exhibit 33. Do you have
- 19 Exhibit 33?
- 20 THE COURT: For identification?
- Q. Yeah, for identification, your Honor?
- MR. RUBINSTEIN: Yeah, for identification, your Honor.
- 23 (Defendant present)
- Q. Do you recognize that document that is part of Exhibit 33
- 25 that's in evidence?

8667KAR1 Riley - cross

- 1 A. Yes.
- Q. In fact, in the revised budget for the first year 2001 to
- 3 2002 Mr. Gurfein's salary as project manager was raised to
- 4 \$133,333, and 75 percent of that was listed as the cost to the
- 5 project, \$100,000, correct?
- 6 A. Correct. So, if Mr. Gurfein was actually paid \$133,000,
- 7 then the 75 percent would be applied to the amount that he was
- 8 actually paid versus the amount that was budgeted. He would be
- 9 allowed up to \$100,000 if that was 75 percent of the amount he
- 10 was actually paid.
- 11 Q. So, in fact your calculation of deducting part of
- 12 Mr. Gurfein's salary in the amount of \$25,000 was incorrect.
- 13 A. On the books and records provided by Mel, Mr. Gurfein's net
- pay was \$100,000 times 75 percent, which would be 75,000. And
- 15 the withholding portion was separated into the fringe benefits
- 16 section, and so that portion of the gross pay is shown as an
- 17 adjustment in the fringe benefit section.
- 18 Q. When you say Mel, you mean Mr. Spitz, correct?
- 19 A. Mr. Spitz.
- 20 Q. But you didn't meet him until the latter part of 2003,
- 21 right?
- 22 A. Right. And the December 2003 report is based on his books
- and records provided by Mr. Spitz.
- Q. Didn't you tell us yesterday that you relied upon the books
- 25 and records that you received from CASI and Ms. Hayes?

8667KAR1 Riley - cross

- 1 A. For the June 2003 report, the short report, I relied on the
- 2 records that were submitted in June.
- 3 For the December report I relied on the books and
- 4 records that were submitted by Mr. Spitz in December.
- 5 On some of the things I might have looked back to see,
- 6 if I needed additional clarification, how they were booked,
- 7 because the check registers provided by the June 2003 records
- 8 were -- you know, I didn't question whether Dr. Karron's books
- 9 paid the person that these checks were written to; it was just
- 10 the allocation of the cost between the budget categories.
- 11 Q. Are you saying that the reports that Mr. Spitz presented to
- 12 you were different than the financial reports that you had
- 13 previously received from CASI?
- 14 A. Certain of the budget categories were different. The
- 15 personnel categories should have been similar.
- 16 O. Well, was it?
- 17 A. I didn't reconcile between the two sets of books. I used
- 18 the ones submitted by Mr. Spitz December 2003 for that report.
- 19 The cost claimed on the December 2003 report reconciles back to
- 20 the Mel Spitz books.
- 21 Q. But the bottom line is now that you looked at Defendant's
- 22 Exhibit H for identification, which is actually part of
- 23 Government Exhibit 33, taking that into account, then it was
- 24 appropriate to pay Mr. Gurfein \$100,000, correct?
- 25 A. No, it was appropriate to pay Mr. -- it was appropriate for SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1 Riley - cross

- 1 the NIST grant to -- well, based on this document, if
- 2 Mr. Gurfein actually worked 75 percent of his time for the NIST
- 3 grant, it would be appropriate to pay him 75 percent of his
- 4 salary as allowable cost.
- 5 THE COURT: Attributable to the NIST grant.
- 6 THE WITNESS: Attributable to the grant. If he spent
- 7 75 percent of his time working on the grant, with allowable
- 8 things for the grant, then he would be entitled to -- the grant
- 9 would reimburse for up to 75 percent of his salary if he spent
- 10 that much time working.
- 11 If he only spent 50 percent of his time on allowable
- 12 grant activities, then even though the budget would allow 75
- 13 percent, he would have actually only spent 50 percent, so he
- should only be reimbursed 50 percent of the time.
- 15 Q. But in your findings you found that he worked 75 percent of
- 16 the time and, therefore, you attributed a \$25,000 reduction in
- 17 allowable expenses, correct?
- 18 A. My audit allows for 75 percent of his time.
- 19 Q. Which reduced his salary from \$133,333 to \$75,000, correct,
- 20 according to your calculations?
- 21 A. No. This would be the gross salary. The 133 should be the
- 22 gross salary, but in my calculations the records provided in
- 23 December 2003 had divided the salary into net salary, and the
- 24 withholdings were included as part of fringe benefits, and so
- 25 that computation is kind of in two parts. Part of it shows up

 SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1 Riley - cross

1 in the fringe benefits section of the report, and part of it

- 2 shows up in the personnel section of the report.
- 3 Q. But the total comes out to \$25,000, correct?
- 4 A. The total adjustment comes out to -- can I have a copy of
- 5 my December report?
- 6 Q. Why don't you take a look at I believe it's Exhibit 62.
- 7 THE COURT: She hasn't got copies of her reports in
- 8 front of her?
- 9 All the documents she had on direct, not just one.
- 10 By the way, H is not in evidence. Defendant's H is
- 11 for identification. You have not offered it in evidence,
- 12 Mr. Rubinstein.
- MR. RUBINSTEIN: I think it's part of --
- 14 THE COURT: I know, but --
- 15 MR. RUBINSTEIN: All right. We will offer H into
- 16 evidence, your Honor.
- 17 THE COURT: You say that, but the government has to
- 18 look at it, makes sure it is part of it, and I have to look at
- 19 it.
- 20 MR. RUBINSTEIN: OK. I gave a copy to the government,
- 21 your Honor, and I would offer defendant's H into evidence.
- 22 THE COURT: Any objection?
- MR. KWOK: No objection.
- 24 THE COURT: Defendant's H is in evidence.
- 25 (Defendant's Exhibit H received in evidence)

SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1 Riley - cross

- 1 A. OK. For the chief operating officer \$25,000 is questioned,
- 2 plus a percentage on page 4 of 8 where it says \$8,466 is
- 3 questioned for payroll for the chief operating officer and
- 4 chief technical officer's salary --
- 5 THE COURT: Just slow down.
- 6 A. OK. The additional amount questioned for the gross salary
- 7 is included in the \$8,466.
- 8 Q. Now that you have reviewed Defendant's H, Government
- 9 Exhibit 33 -- withdrawn.
- 10 Now, you are an independent auditor for the office of
- 11 the inspector general, correct?
- 12 A. Yes.
- 13 Q. It's your responsibility to make sure the numbers that you
- 14 submit are correct, right?
- 15 A. Yes.
- 16 Q. And you have access, do you not, to all the records of the
- 17 NIST ATP grant, correct?
- 18 A. Yes.
- 19 Q. And you had access to what's in evidence as Government's
- 20 33, correct?
- 21 A. Yes.
- 22 Q. And by looking at Government's 33 in defendant's H, which
- 23 is part of it, is it fair to say that it was an error on your
- 24 part to deduct \$25,000 as allowable expenses on behalf of
- 25 Mr. Gurfein the chief operating officer?

8667KAR1 Riley - cross

- 1 A. No.
- Q. And on what basis do you say that?
- 3 A. This adjustment is based on a salary paid to Mr. Gurfein,
- 4 75 percent of the actual salary paid.
- 5 Q. What was the actual salary paid?
- 6 A. I think it was around 125,000.
- 7 Q. Isn't it according to the document that I showed you
- 8 \$133 --
- 9 THE COURT: Let's not have what you think. Go to your
- 10 documents and tell us.
- 11 MR. RUBINSTEIN: She has Exhibit H there in front of
- 12 her, your Honor.
- 13 THE COURT: I understand.
- MR. RUBINSTEIN: Can you look at Exhibit H?
- 15 THE COURT: You asked her. She said it was actual
- 16 salary paid. This is a conclusory document. She has conducted
- an audit; she did the bank records; she did the other records.
- 18 She can look at those to determine what the actual salary paid
- 19 was.
- MR. RUBINSTEIN: Absolutely.
- Q. What was the actual salary paid to Mr. Gurfein, ma'am?
- 22 A. The actual salary was approximately \$122,000.
- 23 Q. And what's 25 percent of \$122,000?
- 24 A. That was the gross salary. The net salary was \$100,000. 75
- percent of the \$100,000 is the \$25,000 adjustment.

8667KAR1 Riley - cross

- 1 Q. Isn't it 25 percent of the gross, ma'am, that you took off?
- 2 A. The additional portion, the gross, is in the fringe
- 3 benefits number of the \$8,466.
- 4 Q. Isn't it a fact that your audit found that Mr. Gurfein was
- 5 to be paid \$100,000, ma'am? That was the finding of your audit
- 6 that you just said you got from Mr. Spitz, that his gross
- 7 salary was \$100,000 --
- 8 A. His net salary was \$100,000. The remainder was included in
- 9 the fringe benefit break-down by Mr. Spitz.
- 10 Q. Fringe benefits are considered part of salary?
- 11 A. The withholdings were accounted for in the books that way.
- 12 Q. Well, withholding is a fringe benefit, correct?
- 13 A. The costs here should be the -- the annual salary should
- include the withholdings as part of it in the budget.
- 15 THE COURT: So it's withholding, not fringe benefits
- 16 that accounts for the difference?
- 17 THE WITNESS: Yes, withholdings. But in the books and
- 18 records provided, the withholdings were included as a fringe
- 19 benefit number, and so in my audit adjustment I included them
- 20 where they were included for the books I was provided.
- 21 Q. But when you talk about fringe benefits like health
- 22 insurance and vacation, that's not included in the person's
- 23 salary, is it?
- 24 A. In the break-down that I was provided -- I included these
- 25 numbers where Mr. Spitz had included the accrual for the cost.

8667KAR1 Riley - cross

- 1 Q. Ma'am, you are an auditor, correct?
- 2 A. Yes.
- 3 Q. You are familiar with accounting principles?
- 4 A. Yes. Withholdings would not be part of the fringe
- 5 benefits. But in the audit --
- 6 THE COURT: But they were in the books, is that what
- 7 you're saying?
- 8 THE WITNESS: They were in the books, and so I
- 9 adjusted where things were in the books.
- 10 Q. It's your take-home pay plus your withholding that makes up
- 11 for your salary, correct?
- 12 A. Correct.
- 13 Q. I mean if I get \$1,000 a week salary and I'm in the 28
- 14 percent bracket, on the books it shows that I had \$1,000 that I
- 15 had to pay taxes on, correct?
- 16 A. Can you repeat that?
- 17 Q. Your taxes are withheld if you are a salaried employee,
- 18 correct?
- 19 A. Correct.
- 20 Q. So that if you make \$1,000 a week and you are in let's say
- the 30 percent bracket, you get a net check of \$700 a week.
- 22 A. Correct.
- 23 Q. Right?
- 24 A. Correct.
- Q. And those monies that with withheld are properly in fringe SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1 Riley - cross

- benefits, correct?
- 2 A. The money for withholding are part of your gross salary and
- 3 are often accounted for in the fringe benefits section.
- 4 THE COURT: But they're not part of your --
- 5 He asked you about fringe benefits. Are withholding
- 6 taxes deducted, from an auditing point of view, proper as
- 7 fringe benefits?
- 8 THE WITNESS: As an auditing point of view we normally
- 9 adjust them where they were claimed by the person doing the
- 10 books. In this instance they were claimed under fringe
- 11 benefits, and so we adjusted them under what they were claimed.
- 12 We didn't adjust personnel cost to include the fringe
- 13 benefits because they -- it was actually considered harder to
- 14 explain that way, but ...
- 15 Q. Do you have a schedule of the actual checks that were
- 16 received by Mr. Gurfein, ma'am?
- 17 A. Yes.
- 18 Q. Where is that schedule?
- 19 A. My database.
- THE COURT: Exhibit?
- 21 MR. KWOK: I believe it's Government Exhibit 110, your
- Honor.
- 23 THE COURT: Exhibit 100, is that what you're referring
- 24 to, Ms. Riley?
- 25 DEPUTY COURT CLERK: I think they said 110.

SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1 Riley - cross

- 1 THE COURT: 110? And 111?
- 2 MR. RUBINSTEIN: And can you tell us what page?
- 3 THE COURT: Ms. Riley, you have a way when I ask you
- 4 for a yes or no answer, instead of giving me a yes or no
- 5 answer, you give me an explanation.
- 6 THE WITNESS: OK.
- 7 THE COURT: Same goes -- give a yes or no answer.
- 8 Then if they ask for an explanation, give the explanation. But
- 9 when you answer it that way, no one knows whether you are
- 10 answering yes or no sometimes. Maybe they don't understand
- 11 you.
- 12 THE WITNESS: OK.
- 13 THE COURT: OK. Now, let's find the pages that have
- 14 Mr. Gurfein's salary. Can you help us there?
- 15 MR. KWOK: Can we direct the witness to a page?
- 16 THE COURT: Yes.
- MR. RUBINSTEIN: Please.
- 18 MR. KWOK: Could I direct your attention to page 36 of
- 19 44 in Government Exhibit 110.
- 20 THE WITNESS: OK.
- 21 Q. Are you looking at that page, ma'am?
- 22 A. I do.
- 23 Q. And you have a total of the net amount of Mr. Gurfein's
- 24 salary?
- 25 A. That shows that --

8667KAR1 Riley - cross

- 1 Q. Do you see the top of the page, ma'am?
- 2 A. Sorry. What page was that?
- 3 Q. Pardon?
- 4 A. What page?
- 5 Q. It's 36 of 44 in Exhibit -- ma'am, could you look at the
- top of that page, page 36 of 44.
- 7 A. Yes.
- 8 Q. And is that a schedule of Mr. Gurfein's net, the checks
- 9 that were actually written to Mr. Gurfein?
- 10 A. No, it was a check that I had -- the database I had
- 11 created, so I had thought that the net checks should be there.
- 12 O. Pardon?
- 13 A. It's the database that I had entered all the checks from
- 14 Dr. Karron.
- 15 Q. So, that's not a Spitz document.
- 16 A. No, that's not Spitz documents.
- 17 Do we have Spitz?
- 18 Q. Well, from the checks that you saw from CASI that you put
- 19 in this exhibit that's in evidence, what is the total amount of
- 20 net pay received by Gurfein?
- 21 A. \$70,000 in checks written.
- 22 Q. Not 100,000, right?
- 23 A. No.
- Q. You just testified under oath that it was 100,000 that he
- 25 received in net salary, correct?

8667KAR1 Riley - cross

- 1 A. According to the records provided by Mel Spitz. So, there
- 2 might have been some adjusted journal entries.
- 3 O. But not according to the records you provided.
- 4 A. Well, they were just based on the checks written.
- 5 Q. Yours is based on the actual checks.
- 6 A. The actual checks written to him.
- 7 Q. And you have those checks, do you not, or copies of those
- 8 checks?
- 9 A. Yes, I do.
- 10 Q. I mean you have access to any bank statement and copies of
- 11 any checks that were written, cashed on any account in this
- 12 case, correct?
- 13 A. Written on --
- MR. KWOK: Objection.
- 15 THE COURT: Objection overruled.
- 16 Q. You have authority to subpoena -- if you didn't get the
- 17 actual records from CASI, you can subpoena a bank, Chase Bank,
- 18 right, to get the records that they have, right?
- 19 A. We're talking about bank records for CASI?
- 20 Q. Talking about the checks --
- 21 A. The checks for CASI.
- 22 O. The checks of CASI.
- 23 A. Yes.
- Q. And did you do a bank reconciliation on the checks that
- were drawn against the four CASI accounts that you mentioned SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1 Riley - cross

- 1 yesterday?
- 2 A. Yes.
- 3 O. And is it fair to say that the schedule that you have here
- 4 on page 36 of 44 of Exhibit 110 was computed on the basis of
- 5 your analysis of those checks?
- 6 A. Yes.
- 7 Q. So, now do you concede that your number before of \$100,000
- 8 in net pay to Mr. Gurfein was inaccurate?
- 9 THE COURT: Net pay?
- MR. RUBINSTEIN: Yeah, that's what she said, the
- 11 100,000 was the net pay.
- 12 THE COURT: Did you say that?
- 13 MR. RUBINSTEIN: Or something like 122,000.
- 14 THE WITNESS: Net pay, yes, based on Mr. Spitz's
- 15 records.
- 16 THE COURT: Well, what was the net pay that you put in
- 17 your books, in your audit?
- THE WITNESS: From my audit the net pay was \$100,000.
- 19 THE COURT: But yet your audit says that he only got
- 20 70,000 on page 36 of 44.
- 21 THE WITNESS: It says that 25 percent of the --
- THE COURT: Well, 36 of 44 says what?
- 23 THE WITNESS: 36 of 44 says 70,000 was net pay.
- 24 THE COURT: Right.
- 25 THE WITNESS: And that came from the actual deposit.

SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1 Riley - cross

- 1 THE COURT: Right. And your audit report says net pay
- 2 was 100,000?
- 3 THE WITNESS: Well, they are from different sources.
- 4 The audit report is from Mr. Spitz's record, so it may have
- 5 adjusting journal entries.
- 6 THE COURT: I don't follow. Why would you use
- 7 Mr. Spitz's record when you have your own record of what it is?
- 8 THE WITNESS: Because I didn't create them until
- 9 later, until after the audit was done.
- 10 THE COURT: You didn't create what?
- 11 THE WITNESS: This record, the 36 of 44, until after
- 12 the audit was done. I did not analyze the canceled checks
- 13 until asked to by investigations.
- 14 THE COURT: All right.
- 15 THE WITNESS: So they were done at different times.
- 16 THE COURT: So, it's your testimony that based on your
- understanding of Mr. Spitz's records there was a \$25,000
- 18 overpayment to Mr. Gurfein.
- 19 THE WITNESS: Yes.
- 20 THE COURT: But when you actually checked the records
- 21 later after the audit was done, and you found out in fact it
- 22 wasn't 100,000.
- THE WITNESS: Correct.
- 24 THE COURT: So, the 100,000 determination by you was
- 25 incorrect --

8667KAR1 Riley - cross

- 1 THE WITNESS: Yes.
- 2 THE COURT: -- based on the records.
- 3 THE WITNESS: Based on the canceled checks, yes.
- 4 THE COURT: All right.
- 5 Q. So, is it fair to say today, June 6, 2008, that the
- 6 disallowance of the \$25,000 in salary of Mr. Gurfein was an
- 7 error in the calculations?
- 8 MR. KWOK: Objection.
- 9 THE COURT: Objection sustained. It's not fair to say
- 10 that. It was based on an incorrect conclusion possibly.
- 11 MR. RUBINSTEIN: OK, incorrect conclusion.
- 12 THE COURT: But based on the records -- but correct
- 13 under the records that she had received from Mr. Spitzer or
- 14 whatever his name is.
- 15 Q. That's an acceptable auditing technique, ma'am, to use the
- 16 representative of the taxpayer, their records?
- 17 A. Yes.
- 18 Q. That's an acceptable auditing principle?
- 19 A. Yes, we use their records.
- 20 Q. Is that an audit? There are principles of auditing, are
- 21 there not, ma'am?
- 22 A. Yes.
- 23 Q. And is it your testimony that you do not do any independent
- evaluation of records submitted to you?
- 25 A. I sampled certain transactions in Mr. Spitz's books.

8667KAR1 Riley - cross

- 1 THE COURT: Is an audit a review of the records of the
- 2 company you're reviewing on according to what they say, or does
- an auditor have to go back to the underlying records to
- 4 determine what the truth is?
- 5 THE WITNESS: We test the records that they provide
- 6 us, and if we think that they do a fair and accurate
- 7 representation of the expenses, then we start our audit using
- 8 their records and make adjustments.
- 9 So, in this case I would have looked at the records
- 10 provided from Mr. Spitz, determined that NIST only agreed to
- 11 pay 75 percent of what Mr. Gurfein's salary was, and so my
- 12 audit adjustment would be the books showed he was paid 100,000
- 13 he was only entitled to ATP reimbursement of 75 percent of
- 14 that, so CASI would have paid 25,000 to Mr. Gurfein and NIST
- 15 would have paid the 75,000 to Mr. Gurfein based on Mr. Spitz's
- 16 records.
- Q. And Spitz's records show that the gross, according to you,
- 18 was 100,000, correct?
- 19 A. The net salary was 100,000.
- 20 Q. Do you have those records here?
- 21 A. Mr. Spitz's records?
- 22 Q. Yes, that you say that Spitz said that the net salary was
- 23 \$100,000.
- 24 A. Yes.
- 25 THE COURT: Do you have the records here?

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8667KAR1 Riley - cross

- 1 THE WITNESS: I have computer copies.
- THE COURT: A computer copy of Mr. Spitz's records?
- 3 THE WITNESS: Yes.
- 4 THE COURT: But not in front of you.
- 5 THE WITNESS: Not in front of me.
- 6 Q. And you didn't use Spitz's figures for Exhibit 110,
- 7 correct?
- 8 THE COURT: For exhibit --
- 9 MR. RUBINSTEIN: 110, the one she is talking about.
- 10 THE COURT: She said that 110 was created after the
- 11 December audit.
- MR. RUBINSTEIN: But if she --
- 13 Q. If you didn't use these figures in 110 for your audit, how
- 14 are they relevant to this case?
- 15 A. Since they were the --
- 16 THE COURT: Well, that's not a good question for her
- 17 to answer. That's not a question for her.
- 18 MR. RUBINSTEIN: All right. Well, I'm not going to --
- 19 THE COURT: You can argue that on summation.
- 20 MR. RUBINSTEIN: I have gone far enough on this issue.
- 21 Q. The bottom line, ma'am, is that between Mr. Gurfein and Dr.
- 22 Karron, you disallowed a total of \$71,550, right?
- 23 THE COURT: Based on Mr. Spitz's records. Is that
- 24 right?
- THE WITNESS: Yes, from Mr. Spitz and Dr. Karron,

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8667KAR1 Riley - cross

- 1 yes -- I mean for Gurfein and Dr. Karron.
- 2 Q. And Spitz' records indicated that Dr. Karron wasn't
- entitled to a hundred percent of his \$175,000 salary?
- 4 A. The NIST budget allows that a salary can be up to. It's
- 5 not in stone the allocations of time worked. These are
- 6 estimates of percentage of projected time on project.
- 7 Q. The budget permitted \$175,000 for Dr. Karron, correct?
- 8 A. The budget would have permitted a hundred percent of the
- 9 time for Dr. Karron if he spent a hundred percent of his time
- 10 working on the ATP project.
- 11 Q. How many hours a week is he supposed to work on the ATP
- 12 project to justify his \$175,000 salary?
- 13 A. He is a salaried employee, so it doesn't amount to hours.
- 14 It is the percentage of time worked. So, if he works --
- 15 THE COURT: Not ifs. What were you told by
- 16 Mr. Spitz's records?
- 17 THE WITNESS: OK.
- 18 THE COURT: What did Mr. Spitz tell you? What did
- 19 Mr. Spitz's records -- what did he tell you?
- 20 THE WITNESS: Mr. Spitz's records would have shown a
- 21 hundred percent of his time. Well, if Spitz's records -- just
- 22 had total salary.
- 23 Q. Pardon?
- 24 A. Mr. Spitz's records showed net salary under the personnel
- 25 section.

8667KAR1 Riley - cross

- 1 Q. So, you relied upon Mr. Spitz's records for Gurfein, but
- you didn't rely upon Mr. Spitz's records for Dr. Karron?
- 3 A. No, the -- Dr. Karron is the CEO of CASI and is also caring
- 4 about the project. Mr. Gurfein's responsibilities included
- 5 fundraising and project managing, strategic planning. Dr.
- 6 Karron would have made -- as owner of CASI and interested in
- 7 the project -- would have had discussions with Mr. Gurfein
- 8 concerning those issues, and those issues, since they are not
- 9 allowable costs, the time he would have spent discussing those
- 10 kinds of issues would not be allowable charges to the ATP
- 11 project.
- 12 So, he didn't really -- he really wasn't spending a
- 13 hundred percent of his time, and so as auditors, based on
- 14 interviews --
- 15 THE COURT: How did you determine he wasn't spending a
- 16 hundred percent of his time?
- 17 THE WITNESS: Based on --
- 18 THE COURT: For this audit report.
- 19 THE WITNESS: Based on -- just on what -- that it's a
- 20 company, I guess professional judgment.
- 21 THE COURT: What?
- 22 THE WITNESS: Professional judgment. Knowing the type
- 23 of business, knowing their requirements, that a hundred percent
- of the time for the CEO is not on just project time.
- 25 THE COURT: It wasn't based on anything that Mr. Spitz SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1 Riley - cross

or Dr. Karron told you or anything of that sort? It's just

- professional judgment.
- 3 THE WITNESS: Right. And I had asked Dr. Karron about
- 4 things, various employees, and, you know.
- 5 THE COURT: And what?
- 6 THE WITNESS: And observed things that people did.
- 7 THE COURT: You mean your observations during the
- 8 audit?
- 9 THE WITNESS: Yeah, and things discussed during the
- 10 audit.
- 11 Q. So, it's your testimony that if I'm a salaried -- if a
- 12 person is a salaried employee, and they work 80 hours a week on
- one project, and they spend two hours of that 80 hours on
- 14 non-direct activities, you are going to deduct part of their
- 15 salary as an allowable expense?
- 16 A. As a NIST-reimbursable expense for -- they're being
- 17 reimbursed for -- yes.
- 18 If they're not working on the NIST project, and their
- 19 duties aren't related to the NIST project, then only the
- 20 portion that's related to the project cost is allowable.
- 21 Q. Well, what if they had two jobs, they had a NIST job and at
- 22 night they taught at some university, and now they only work 40
- 23 hours a week?
- MR. KWOK: Objection.
- 25 THE COURT: Objection sustained.

SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1 Riley - cross

- 1 Q. Is it fair to say that you are not the last word on what's
- 2 allowable and what's not allowable in the OIG's office?
- 3 A. During resolution of the audit?
- 4 Q. In the whole process that a company can dispute your
- 5 interpretations, correct?
- 6 A. Correct, it goes through a resolution process.
- 7 Q. And are you part of that resolution process?
- 8 A. Yes.
- 9 Q. Do you make the final decision at that resolution process?
- 10 A. The grants office makes the final decision.
- 11 Q. The grants office?
- 12 A. Um-hum.
- 13 Q. The grants office of what?
- 14 A. NIST ATP.
- 15 Q. So they have a right in the final resolution to approve any
- of these expenses, correct?
- 17 A. Yes, they do.
- 18 Q. Now, you talked about fringe benefits. Did you make any
- 19 determination in your audit as to other fringe benefits other
- 20 than the payroll tax, tax withholding? Did you make any
- 21 determinations as to any other fringe benefits, whether they
- 22 were allowable or not?
- 23 A. Yes.
- 24 Q. Because actually you are making a determination in your
- analysis of what is allowed, correct?

8667KAR1 Riley - cross

- 1 A. Yes.
- 2 Q. As distinguished from what is allowable.
- 3 A. I make the determination for what is allowable.
- 4 Q. Well, did you review any materials to determine what was an
- 5 appropriate fringe benefit for the CASI organization?
- 6 A. What is your -- I don't understand that question.
- 7 Q. Did you review anything to determine in your mind what
- 8 fringe benefits would be, like let's say medical, what medical
- 9 fringe benefits should be allowable?
- 10 A. Yes.
- 11 Q. And what did you review?
- 12 A. He had some kind of plan document I think from '96 that
- 13 didn't mention these kinds of benefits.
- 14 THE COURT: What did you say?
- 15 THE WITNESS: He had a document that didn't mention --
- 16 I don't think it mentioned fringe benefits or mentioned all of
- 17 these.
- 18 THE COURT: Sorry. What? I can't hear you.
- 19 THE WITNESS: He had a plan document or an office
- 20 policy document.
- 21 THE COURT: Which was it?
- 22 THE WITNESS: Office policy. That's the only document
- 23 that I reviewed that mentioned -- that was in effect during the
- 24 period of the grant.
- THE COURT: That's what you were guided by here?

SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1 Riley - cross

1 THE WITNESS: And I reviewed -- well, I reviewed the

- 2 expense records, the ledger records.
- 3 THE COURT: Provided to you by?
- 4 THE WITNESS: Mel Spitz, Mr. Spitz.
- 5 THE COURT: Go ahead. What else?
- 6 THE WITNESS: Everything else was the log.
- 7 THE COURT: What? The log?
- 8 THE WITNESS: Yeah, the criteria that was provided
- 9 by --
- 10 THE COURT: What criteria?
- 11 Q. What criteria?
- 12 A. Well, ATP guidance or whatever criteria would have to do
- 13 with fringe benefits.
- 14 Q. Isn't the company's policies, even if they're not written,
- 15 aren't they to be considered in making that determination what
- 16 the practice is of that organization?
- 17 A. It didn't mention those kinds of benefits in the policy
- 18 that I saw.
- 19 THE COURT: The office policy.
- 20 THE WITNESS: In the office policy.
- 21 Q. That's not the question.
- 22 A. OK.
- 23 Q. You say you saw a document from 1996, correct?
- 24 A. It was an old document. I'm not sure. I don't recall the
- 25 exact year but it was --

8667KAR1 Riley - cross

- 1 Q. Did you ask --
- 2 THE COURT: This document, what is it? What are we
- 3 talking about? Are you talking about the office policy manual?
- 4 Is that what you mean by the document, Mr. Rubinstein?
- 5 MR. RUBINSTEIN: That's what she indicated.
- 6 THE COURT: All right. But let's be sure we are
- 7 talking about what we're talking about.
- 8 Q. The document that you say that you saw, did you discuss
- 9 whether or not that was still in effect in the year 2003 when
- 10 you did the audit?
- 11 A. They were revising it in 2003.
- 12 Q. And did they advise you they were revising it?
- 13 A. Yes, that they were revising it.
- 14 THE COURT: And who gave you the document?
- 15 THE WITNESS: I don't know if I have a copy. I don't
- 16 know that they had finished -- I don't think I got a copy. I'm
- 17 not sure I have a copy of that document.
- THE COURT: Which document?
- 19 THE WITNESS: The revised document.
- 20 THE COURT: I'm not asking you about the revised
- 21 document. Who handed you the document that you did see?
- 22 THE WITNESS: I don't recall. I think I got that one
- in June, but I don't recall specifically.
- 24 THE COURT: When? From whom is what I asked, not
- when.

8667KAR1 Riley - cross

1 THE WITNESS: I don't know whom.

- THE COURT: I asked from whom.
- 3
 THE WITNESS: I don't remember.
- 4 THE COURT: Listen to the question before you answer,
- 5 and try and give a yes or no answer, please.
- THE WITNESS: I don't remember whom.
- 7 THE COURT: OK.
- 8 Q. Now, you were informed that they were working on a revised
- 9 manual, is that correct?
- 10 A. Yes.
- 11 Q. And were you advised that the revised manual would have the
- 12 fringe benefits that were in place in CASI from before the
- 13 grant?
- 14 THE COURT: Sorry?
- 15 Q. That the revised --
- 16 THE COURT: Question withdrawn. Start over again,
- 17 Mr. Rubinstein.
- 18 Q. You had discussions that they were working on a revised
- 19 manual, correct, including fringe benefits?
- 20 A. Yes, I knew that they were revising their manual.
- 21 Q. And did you question as to what policies had been in effect
- 22 prior to the ATP grant?
- 23 THE COURT: Forget about the revised manual now. He
- 24 is asking you did you ask what policies were in effect prior to
- 25 the ATP grant. Did you ask that question?

8667KAR1 Riley - cross

- 1 THE WITNESS: I don't recall.
- 2 Q. Is it a fact that under the auditing procedure you can
- 3 inquire as to fringe benefits such as medical, as to what the
- 4 company's policy was and what it had done previously?
- 5 A. That is one consideration.
- 6 THE COURT: Sorry. What?
- 7 THE WITNESS: Yes. Yes.
- 8 Q. And did you inquire of anyone -- well, did you inquire of
- 9 Dr. Karron what the practice of CASI was prior to getting the
- 10 ATP grant as to fringe benefits?
- 11 A. I don't recall.
- 12 Q. Well, let me show you what's been marked for identification
- 13 as Defendant's L and ask you if you have ever seen that
- 14 document before.
- 15 A. I don't recall seeing this document before.
- 16 Q. Now, did you review the contract of Mr. Gurfein when you
- were reviewing his salary?
- 18 A. Yes.
- 19 Q. And let me show you what's been marked for identification
- 20 as Defendant's K.
- 21 THE COURT: 3505 what?
- 22 MR. RUBINSTEIN: It's in 3505. It doesn't have a
- 23 letter but it's before C. 3505, I guess it must be in the B
- 24 part.
- Q. Is that a document that you reviewed which was a CASI SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR1 Riley - cross

- 1 document, ma'am?
- 2 A. Yes.
- 3 O. As a matter of fact, you had a copy of that, did you not?
- 4 A. Yes.
- 5 Q. As a matter of fact, you turned your copy over to the
- 6 prosecution yesterday, correct?
- 7 A. Yes.
- 8 MR. RUBINSTEIN: We offer Defendant's K into evidence.
- 9 MR. KWOK: No objection.
- 10 THE COURT: Defendant's K is admitted into evidence.
- 11 Can I see a copy?
- MR. RUBINSTEIN: I gave you one, Judge.
- 13 (Defendant's Exhibit K received in evidence)
- 14 THE COURT: This is an employment agreement --
- MR. RUBINSTEIN: Yes.
- 16 THE COURT: -- between Mr. Gurfein and Computer Aided
- 17 Surgery, dated as of October 1, 2001, signed on December 26,
- 18 2001.
- 19 Q. And this was provided to you as part of the audit, correct?
- 20 A. Yes.
- 21 Q. To show -- well, I will withdraw that. This contract
- 22 provides for fringe benefits, does it not?
- 23 A. Sorry. What?
- Q. This document provides for fringe benefits?
- 25 A. Yes.

	8667KAR1 Riley - cross
1	Q. And will you read to the jury what the fringe benefits
2	provided by CASI were.
3	A. On page 3, the executive will be entitled to participate in
4	all benefit plans or programs of the company currently in
5	existence or to be established, including medical, dental, life
6	insurance, retirement, pensions, vacations, sick leave and
7	holidays.
8	(Continued on next page)
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SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

- 1 BY MR. RUBINSTEIN:
- 2 Q. Thank you. Now, you also -- you also disallowed certain
- 3 salary of other people, is that correct?
- 4 A. Yes.
- 5 Q. And you disallowed salary of Abe Karron?
- 6 A. Yes. Well --
- 7 THE COURT: I'm sorry, are you changing your --
- 8 A. Abe didn't have salary.
- 9 THE COURT: She say Abe didn't have a salary.
- 10 Q. Did Abe receive any monies from CASI?
- 11 A. For the projection, projector.
- 12 THE COURT: For what?
- 13 THE WITNESS: He did, the projector and the screen.
- 14 He didn't have -- wasn't salaried.
- 15 THE COURT: If you answer first yes or no, that helps.
- 16 THE WITNESS: Oh, sorry.
- 17 Q. And that was an allowable expense, correct?
- 18 A. I'm sorry, what?
- 19 O. That was allowable?
- 20 A. What was allowable?
- 21 Q. The money paid to Abe Karron?
- THE COURT: What did you say?
- 23 THE WITNESS: What money paid to Abe Karron?
- Q. The thousand dollars and change?
- 25 A. I think that was questioned under equipment, maybe.

866zkar2 Riley - cross

- 1 Q. Did you allow or disallow that amount?
- 2 THE COURT: Were any of these allowed or disallowed or
- 3 were they questioned, any of these expenses?
- What was your role here? Were you disallowing or were
- 5 you recommending or were you questioning; what were you doing?
- 6 THE WITNESS: We --
- 7 THE COURT: You.
- 8 THE WITNESS: Yes. We questioned, we questioned the
- 9 cost and recommend that it be disallowed.
- 10 THE COURT: Okay.
- 11 Q. And you recommended in this report that over \$500,000 would
- be disallowed, correct?
- 13 A. Correct.
- 14 THE COURT: This is the December report?
- 15 MR. RUBINSTEIN: The audit was in December --
- 16 actually, it was filed I believe in March of 2004.
- 17 Q. Is that correct, Ms. Riley?
- 18 A. Correct.
- 19 THE COURT: All right.
- Q. Now, there was an employee Miss Winter?
- 21 A. Yes.
- 22 Q. And did you allow or disallow part of her salary?
- 23 A. Disallow.
- Q. And how much of her salary was disallowed.
- 25 A. 25 percent, approximately.

866zkar2 Riley - cross

1 Q. What basis was -- Ms. Winter was a bookkeeper at CASI

- 2 correct?
- 3 A. Correct.
- 4 Q. And on what basis was 25 percent disallowed?
- 5 A. On the basis that she also kept the books for the business
- 6 CASI, and so she, she worked on -- so NIST would reimburse her
- 7 total salary.
- 8 THE COURT: I couldn't hear you.
- 9 THE WITNESS: NIST would only reimburse the portion of
- 10 the time that she worked for NIST.
- 11 THE COURT: I see. And the rest was for the
- 12 corporation?
- 13 THE WITNESS: Theory Corporation.
- 14 THE COURT: Theory?
- THE WITNESS: Theory Corporation.
- 16 Q. Wasn't her job as a bookkeeper for CASI?
- 17 A. Yes.
- 18 Q. Weren't employee salaries included in the budget?
- 19 A. Only the portion of the time that would be attributable to
- 20 NIST work would be reimbursed by the grant.
- Q. But there was only one project going on at CASI, correct?
- 22 A. Correct, but --
- 23 Q. So 100 percent of her time was being spent on CASI-related
- 24 items, correct, ATP related items?
- 25 A. No.

866zkar2 Riley - cross

1 Q. You also -- she also had some fringe benefits, did she not?

- 2 A. Yes.
- 3 Q. What kinds of fringe benefits did she have?
- 4 A. Medical expense and child care.
- 5 Q. And you disallowed her child care, correct?
- 6 A. Correct.
- 7 Q. That was a fringe benefit of CASI, correct?
- 8 A. Correct.
- 9 Q. And you decided that --
- 10 THE COURT: Was it in the manual or not?
- 11 THE WITNESS: It was not in the manual. That was
- 12 provided to me originally.
- 13 THE COURT: Were you given another one later?
- 14 THE WITNESS: Just the one that I was -- just the
- 15 revised one I just received now.
- 16 THE COURT: You were, you were given that?
- 17 THE WITNESS: No, no. This is -- no, I wasn't given
- 18 the revised manual.
- 19 THE COURT: You were given the revised manual?
- 20 THE WITNESS: No, I did not, did not receive the
- 21 revised manual.
- THE COURT: Then why did you answer yes?
- 23 THE WITNESS: I just got it -- I said yes, just now, I
- 24 received the revised manual.
- 25 THE COURT: What?

866zkar2 Riley - cross

1 THE WITNESS: Because I just got this revised manual,

- 2 yes. Not the time of the audit.
- 3 THE COURT: I didn't --I'm asking you about what you
- 4 did at the time you did it.
- 5 THE WITNESS: Yeah, I did not receive the revised
- 6 manual at that time.
- 7 THE COURT: All right. So on the information you had,
- 8 you decided to not allow child care?
- 9 THE WITNESS: Correct.
- 10 THE COURT: Okay.
- 11 Q. Did you discuss with anybody, with Dr. Karron, as to the
- 12 fringe benefit policy related to child care for Miss Winter?
- 13 A. I don't recall.
- 14 THE COURT: That revised manual isn't in evidence, is
- 15 it?
- MR. RUBINSTEIN: No, your Honor.
- 17 THE COURT: You're relying on something that's not
- 18 even in evidence yet.
- 19 THE WITNESS: Oh, okay.
- 20 THE COURT: All right.
- THE WITNESS: All right.
- THE COURT: Let's get it together.
- THE WITNESS: Okay.
- MR. RUBINSTEIN: Your Honor --
- MR. KWOK: Objection.

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866zkar2 Riley - cross

1 THE COURT: Objection -- objection sustained. I don't

- 2 know what, what you're objecting to. It may have been my
- 3 remarks, so maybe.
- 4 MR. KWOK: No, I'm objecting to the --
- 5 THE COURT: I'll sustain it, I'll sustain that also.
- 6 MR. RUBINSTEIN: You want to strike your remarks, your
- 7 Honor?
- 8 THE COURT: Well --
- 9 Q. Now, CASI wrote checks for rent, correct?
- 10 A. Correct.
- 11 Q. Now, rent is ordinarily not permitted as a direct cost,
- 12 correct?
- 13 A. Correct.
- 14 Q. In a situation where the sole -- and the reason, is the
- 15 reason for that because normally a business is conducting other
- 16 businesses other than the grant project and, therefore, it's
- hard to attribute what portions would be applicable?
- 18 A. It's -- it would need to be in the budget.
- 19 Q. There's others -- there's a provision for others in the
- 20 budget, correct?
- 21 A. Correct.
- 22 Q. And you could increase that category by up to 10 percent of
- the 800,000 in the first year, correct?
- 24 A. Correct.
- 25 Q. Now, but going with the -- so that is an issue that --

866zkar2 Riley - cross

- 1 actually whether something is an indirect or a direct cost is
- 2 something that could be negotiated with the grant offices,
- 3 right?
- 4 MR. KWOK: Objection.
- 5 Q. Well, in the audit resolution you could negotiate whether
- 6 or not that would be a direct cost as opposed to an indirect
- 7 cost?
- 8 A. Rent would be considered an indirect cost.
- 9 Q. Generally speaking, right; is that correct?
- 10 A. Correct.
- 11 Q. But the CFR that you're governed by says that you deal on a
- 12 case-to-case basis?
- 13 A. Correct.
- 14 Q. Now, let's assume for these questions that the rent was, in
- 15 fact, not allowable; it was in fact an indirect cost, okay.
- 16 Follow that?
- 17 A. Not allowable -- yes.
- 18 Q. I'm assuming that you're correct, okay?
- 19 A. I'm correct.
- 20 Q. The rent attributable to the ATP grant would start when?
- MR. KWOK: Objection.
- 22 A. Start?
- 23 Q. Yeah, when would it start? If rent was paid --
- 24 A. If rent was allowable?
- Q. No, no. If it was paid, it was an expense. It's not

SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

1 allowable, it's an expense that's paid, but not allowable.

- 2 MR. KWOK: Objection.
- 3 O. Let me ask you --
- 4 THE COURT: I don't understand the question.
- 5 Q. Let me ask you this, was there --
- 6 THE COURT: I don't understand the question. Reframe
- 7 the question.
- 8 Q. Okay. When you started to audit CASI, did you ascertain
- 9 what the financial condition of CASI was before the grant
- 10 started in October of 2001?
- 11 A. Yes.
- 12 Q. And is it fair to say that CASI Corporation was in debt in
- excess of between 100 and \$200,000 at that time?
- 14 A. I don't know how much they were in debt.
- 15 Q. Well, in fact --
- 16 THE COURT: You don't know whether they were in debt?
- 17 THE WITNESS: They were in debt. I don't know the
- amount.
- 19 Q. And CASI, prior to the ATP grant, was in fact paying rent
- 20 to Dr. Karron for use of that portion of the apartment at 300
- 21 East 33rd Street?
- THE COURT: Before the grant?
- MR. RUBINSTEIN: Before the grant.
- THE COURT: Is that your knowledge?
- 25 THE WITNESS: No. My knowledge is they took -- they SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

1 paid themselves nine months of back rent when they first got

- 2 the check, CASI, paid, took --
- 3 Q. Go ahead.
- 4 A. The back -- they paid, they paid back rent with the first
- 5 drawdown of NIST funds for nine months, \$18,000.
- 6 Q. And they listed, they listed what months the rent was for,
- 7 correct?
- 8 A. Correct.
- 9 Q. I mean, there is a memo on each check, right?
- 10 A. Yes. Now there is.
- 11 Q. Pardon?
- 12 A. Yes.
- 13 Q. And the memo says what month that \$2,000 check was payment
- 14 for?
- 15 A. Yes.
- 16 Q. Now, did you do any --
- 17 THE COURT: To whom was the check payable?
- 18 THE WITNESS: Dr. Karron.
- 19 THE COURT: What?
- THE WITNESS: Dr. Karron.
- 21 Q. And if he received rent money, then he would have to report
- that as income on his tax return, correct?
- 23 THE COURT: Objection --
- MR. KWOK: Objection.
- 25 THE COURT: -- sustained.

SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

- 1 Q. Well, are you aware -- did you examine Dr. Karron's tax
- 2 returns --
- 3 MR. KWOK: Objection.
- 4 Q. -- as part of this audit?
- 5 THE COURT: As part of the audit, did you look at his
- 6 tax returns?
- 7 THE WITNESS: I don't recall if I have his tax returns
- 8 or not.
- 9 Q. When, when was the last -- well, if you're correct that --
- 10 so the first nine checks, \$18,000 was paid for an expense that
- 11 was incurred prior to the grant, right?
- 12 A. Correct.
- 13 Q. And it wouldn't matter if you called it rent or you bought
- 14 a piece of equipment unrelated to the grant prior to the grant,
- 15 it was an expense that he -- it was a debt that he was paying
- 16 off, correct?
- 17 A. Correct.
- 18 Q. Now, he would be entitled, would he not, to increase his
- 19 salary under the rules by as much as 10 percent without prior
- 20 approval?
- 21 A. Salary would probably need to be prior approval. The
- 22 personnel salaries total may not need prior approval.
- 23 Q. May?
- 24 A. But would need -- the -- if he were using the 10 percent
- 25 rule for -- and you had additional salaries of 10 percent. But SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 for a specific salary, you know, if things, if things changed
- with the named people, that's supposed to get an approval from
- 3 the grant people.
- 4 Q. Isn't he allowed to get 10 percent of the \$800,000 to use
- 5 without any budget approval for any line item that had already
- 6 been established; isn't that the rule?
- 7 A. He can reallocate ten percent of the line items if it's --
- 8 if it's allowable NIST cost, attributable to the grant.
- 9 Q. His salary was allowable, correct?
- 10 A. At the amount they approved.
- 11 Q. But he could, under the 10 percent rule, he could increase
- 12 that salary, correct?
- 13 A. I'm not sure about that.
- 14 Q. He could increase -- could he increase equipment?
- 15 A. Equipment he could.
- 16 Q. Could he increase fringe benefits?
- 17 A. Fringe benefits, allowable fringe benefits to the -- it
- 18 would be able to increase.
- 19 Q. That payment -- by the way, Dr. Karron had, you said he had
- 20 four accounts, right?
- 21 A. Four checking accounts.
- 22 Q. Four checking accounts. And he had a different colored
- 23 check for each checking account, correct?
- 24 A. I don't know.
- Q. You saw the checks, did you not?

866zkar2 Riley - cross

- 1 A. I saw copies of the checks.
- 2 Q. They were not in color?
- 3 A. No.
- 4 Q. These rent checks were paid out of the CASI, Inc. account,
- 5 correct?
- 6 A. I don't recall, but that could be true.
- 7 Q. Now, you have a schedule as to the rent checks, do you not?
- 8 THE COURT: Were these checks to the landlord? Rent
- 9 checks, was there a landlord here or is it -- or is it a --
- 10 MR. RUBINSTEIN: Well, Dr. Karron was the landlord,
- 11 your Honor.
- 12 Q. Now, which --
- 13 THE COURT: I don't know. The witness then should
- 14 testify, Mr. Rubinstein.
- MR. RUBINSTEIN: Okay.
- 16 Q. You have this on the schedule in the 3500 material,
- 17 correct? And I direct your attention to 3500 ten -- 110, page
- 18 39 of 44?
- 19 MR. KWOK: Your Honor, I believe that's government
- 20 Exhibit 110.
- 21 MR. RUBINSTEIN: Yeah, government exhibit. I'm sorry,
- 22 Judge.
- 23 THE COURT: Before you get into that, just so we're
- 24 clear, Ms. Riley, was this created after your -- was this
- document 110 created after your audit was, December, was

866zkar2 Riley - cross

- 1 created?
- THE WITNESS: Yes, yes.
- 3 THE COURT: After the report was created?
- 4 THE WITNESS: Yes.
- 5 THE COURT: All right. So you know, approximately,
- 6 when it was created?
- 7 THE WITNESS: The data base was created in 2004, 2005
- 8 but this specific document was created on May 28. It's got the
- 9 date on here.
- 10 THE COURT: I see.
- 11 Q. Now, by looking at that document, ma'am, could you use that
- 12 to refresh your recollection as to how -- the rent was \$2,000 a
- month, correct?
- 14 A. Correct.
- 15 Q. And by looking at that document, can you tell the jury how
- 16 many payments were made of \$2,000 prior to the start of the
- 17 grant on October 1?
- 18 THE COURT: How many payments were made?
- 19 Q. Yeah, attributable to rent that was for periods prior to
- 20 the start of the grant of January -- of October 1, 2001?
- 21 THE COURT: Do you have a page to refer to?
- MR. RUBINSTEIN: Yes. It's page 39 of 44. in exhibit,
- 23 government Exhibit 110, your Honor.
- 24 THE COURT: All right.
- 25 Q. Do you have that, ma'am?

866zkar2 Riley - cross

- 1 A. Yes.
- 2 THE COURT: By the way, what is GL?
- 3 THE WITNESS: The general ledger, one of the general
- 4 ledgers.
- 5 Q. And by reviewing that document, how many of the rent
- 6 payments were made after for time periods after October 1st,
- 7 2001, start --
- 8 A. After -- how many checks were made for the period starting
- 9 October 1, 2001?
- 10 Q. When the grant started.
- 11 A. When the grant started, how many payments were made, after
- 12 that?
- 13 Q. Right.
- 14 A. There's 21 payments made during the grant period and nine
- 15 payments --
- 16 0. 21?
- 17 A. -- for periods prior to the --
- 18 Q. During the grant period -- excuse me, ma'am. Did you say
- 19 during or before the grant period?
- 20 A. 21 that were paid during the grant period, and nine were
- 21 made for a period prior to the grant award.
- 22 Q. Isn't it a fact that the -- if you start at the, where it
- 23 says rent on office, 30 detailed records, correct?
- 24 A. Yes.
- Q. And you start out, the first check was to pay the rent owed SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

- 1 for January, 2000, correct?
- 2 A. Correct.
- 3 O. And you follow down the next number of checks, there is a
- 4 total of nine checks that were attributable to rent owed from
- 5 2000, correct?
- 6 A. Yes.
- 7 Q. And then that's all prior to the grant, correct?
- 8 A. The nine, the nine -- the first nine were prior to the
- 9 grant.
- 10 Q. And then you have the next check is January '01, going down
- 11 to the bottom of that page?
- 12 THE COURT: Wait a minute. After the first nine
- checks dated October 26, 2001?
- MR. RUBINSTEIN: No, your Honor.
- 15 THE COURT: The next check is 11/9, not January.
- 16 MR. RUBINSTEIN: No, your Honor. If your Honor looks
- 17 at details for the check, they have -- they show the date
- 18 that -- from the memo as to what period. We concede it was
- 19 paid after the grant. But this, these expenses were for --
- were owed from 2000.
- 21 THE COURT: I understand. You've covered that. But
- 22 then you skipped this October 26 to January, and there were
- 23 payments made in November and in December which you omitted in
- 24 your question. You said it was the next check.
- MR. RUBINSTEIN: I am going by the, the checks in the SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

- 1 schedule, your Honor. There's --
- 2 THE COURT: I'm going by the checks in the schedule
- 3 too, page 39 of 44.
- 4 MR. RUBINSTEIN: Right. The first --
- 5 THE COURT: So let's frame your question properly.
- 6 MR. RUBINSTEIN: Okay.
- 7 Q. The first check that was paid was for January 2000's rent,
- 8 correct?
- 9 A. Yes.
- 10 Q. The next check was February 2000's rent?
- 11 A. Yes.
- 12 Q. Next is March 2000 rent?
- 13 A. Yes.
- 14 Q. And April 2000 rent?
- 15 A. Yes.
- 16 Q. Then May 2000's rent?
- 17 A. Yes.
- 18 Q. June 2000's rent?
- 19 A. Yes.
- 20 Q. July 2000 rent?
- 21 A. Yes.
- 22 Q. August 2000 rent?
- 23 A. Yes.
- Q. September 2000 rent, correct?
- 25 A. Correct.

866zkar2 Riley - cross

1 Q. Okay. So those are nine checks that were written after the

- grant, but paid for expenses incurred before the grant,
- 3 correct?
- 4 A. Correct.
- 5 Q. Now, then you have the next check is for January rent 2001,
- 6 correct?
- 7 A. Correct.
- 8 Q. February rent, 2001?
- 9 A. Correct.
- 10 Q. March rent, 2001?
- 11 A. Correct.
- 12 Q. April rent, 2001?
- 13 A. Correct.
- 14 Q. We'll take December out. Then June rent, 2001?
- 15 A. Correct.
- 16 Q. May rent, 2001?
- 17 A. Correct.
- 18 THE COURT: But what date -- that's what you're
- 19 reading off is the date on the explanation, is that correct?
- 20 MR. RUBINSTEIN: Correct, your Honor.
- 21 THE COURT: Well, when were the checks written?
- 22 MR. RUBINSTEIN: Checks were written in October,
- 23 November, December and January -- October, November,
- 24 December 2001, after the grant.
- THE COURT: Is that correct, Ms. Riley?

SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

- 1 THE WITNESS: The checks -- this is the date the
- 2 checks cleared the bank on this date.
- 3 THE COURT: Excuse me?
- 4 THE WITNESS: The checks cleared the bank. These
- 5 would have been the times the checks cleared the bank.
- 6 THE COURT: When were the checks -- yes or no, were
- 7 the checks written in November, December, and January?
- 8 THE WITNESS: Yes.
- 9 THE COURT: There were checks written in November were
- 10 attributed on the check to payable for the January 1st rent?
- 11 THE WITNESS: Yes, yes.
- 12 THE COURT: All right. And similarly --
- 13 Q. So is it fair to say that 18 of these \$2,000 checks were
- 14 written to pay for expenses that occurred prior to the grant?
- 15 A. Yes.
- 16 Q. That would come to a total of \$36,000?
- 17 A. Right.
- 18 Q. Correct?
- 19 A. Yes.
- 20 Q. Okay. Fringe benefits were budgeted for a \$110,000, is
- 21 that correct, according to the budget?
- 22 A. Fringe benefits --
- Q. Do you have the budget, ma'am?
- 24 A. Fringe benefits were for --
- 25 MR. KWOK: Your Honor, may I hand up the budget to the SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

- 1 witness?
- THE COURT: You may.
- 3 MR. KWOK: Government exhibit 22.
- 4 (Handing)
- 5 Q. Have you examined exhibit 22, ma'am?
- 6 A. For year one?
- 7 Q. Year one.
- 8 A. \$110,000 is the budget for fringe benefits.
- 9 Q. And how much fringe benefits were expended by the business?
- 10 A. I don't have the, the year one amount expended. The year
- one -- where is the --
- 12 Q. You want to look --
- 13 A. Where is the --
- 14 Q. You want to look at exhibit 62?
- 15 A. Less than \$110,000.
- 16 Q. Pardon? You want to look at exhibit -- maybe this will
- 17 help you, exhibit 62. There is an appendix number three.
- 18 A. Exhibit 62.
- 19 Q. Page 16. Does that, in any way, refresh your recollection
- 20 as to the amount of fringe benefits that were claimed by CASI?
- 21 A. That doesn't.
- 22 Q. Do you have anything that, that shows you the amount that
- 23 you disallowed, or suggested should be disallowed?
- 24 THE COURT: What are you referring to now?
- MR. RUBINSTEIN: There is an appendix in exhibit 62, SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

1 government exhibit 62, your Honor, appendix number three,

- 2 page --
- THE COURT: What page?
- 4 MR. RUBINSTEIN: Page 16.
- 5 MR. KWOK: Your Honor --
- 6 THE COURT: Yes.
- 7 MR. KWOK: I think defense counsel is directing the
- 8 witness' attention to the defendant's response, not to her
- 9 work.
- 10 MR. RUBINSTEIN: No. I'm directing her attention to
- 11 the left side of the page. As you look at it, there is --
- 12 THE COURT: I'm just trying to find the page, so I can
- determine what you're referring to. Page 16, appendix three?
- 14 MR. RUBINSTEIN: Appendix three, yes, your Honor.
- 15 THE COURT: All right.
- 16 Q. All right. As you look at the page, the left-hand portion
- 17 are your numbers, correct, Ms. Riley?
- 18 A. Okay. The left-hand numbers.
- 19 Q. As you look at the page?
- 20 A. Yes.
- Q. Where it says, disallows, then there is a column?
- 22 A. Yes, questioned is a column. Yes, okay.
- 23 Q. And the other side says answer. That was what was
- submitted by Mr. Spitz in his presentation, correct?
- 25 A. Correct.

866zkar2 Riley - cross

- 1 THE COURT: So the position -- this is a response to
- 2 the draft audit report, as Mr. Kwok said, right, Mr --
- 3 MR. RUBINSTEIN: No. These are her numbers -- yes.
- 4 But those -- yes.
- 5 THE COURT: As contained in the response --
- 6 MR. RUBINSTEIN: Okay.
- 7 THE COURT: -- to the draft audit report.
- 8 MR. RUBINSTEIN: Fair enough, Judge.
- 9 THE COURT: What?
- 10 BY MR. RUBINSTEIN:
- 11 Q. Did you check that Mr. Spitz had properly calculated and
- identified what you had disallowed in this audit?
- 13 A. I'm sorry, repeat that?
- 14 Q. In other words, the disallowances are purported by
- 15 Mr. Spitz to be what you disallowed as the OIG auditor from
- 16 CASI?
- 17 A. Correct.
- 18 Q. And did you check these figures so that could you determine
- 19 that those were, in fact, your disallowances?
- 20 A. Correct.
- 21 Q. So these -- so it's fair to say that the numbers depicted
- 22 on the left-hand side of the page, as you look at it, marked
- 23 disallowance, are in fact your numbers?
- 24 A. Correct.
- Q. And by the way, Mr. Spitz submitted an 80 page response, SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

- 1 did he not?
- 2 A. The response? Dr. Karron, with the aid of Mr. Spitz. I --
- 3 what, this 38 page response?
- 4 Q. Well, did you -- was it an 80 page response?
- 5 THE COURT: It says 16 of 38, Mr --
- 6 MR. RUBINSTEIN: I know what it says, Judge. I'm just
- 7 asking a question.
- 8 THE COURT: Was it in fact more than this 38 pages,
- 9 Ms. Riley?
- 10 THE WITNESS: I --
- 11 THE COURT: Do you know?
- 12 THE WITNESS: I think this is all.
- THE COURT: Do you know? Yes or no, or you don't
- 14 know?
- 15 THE WITNESS: I don't know.
- 16 THE COURT: Okay.
- 17 THE WITNESS: This is all I know.
- 18 Q. Your total questionable items was \$547,000, correct? You
- 19 want to look at 3502B, top of the second page and see if that
- 20 refreshes your recollection?
- 21 A. 547?
- 22 O. What?
- 23 A. Yeah 547.
- Q. 547,000 was questionable, correct?
- 25 A. Correct.

866zkar2 Riley - cross

1 Q. And you didn't change one dollar after you reviewed

- 2 Mr. Spitz's response, correct?
- 3 A. Correct.
- 4 O. And it's a fact that --
- 5 THE COURT: Who gave the response; do you know who
- 6 wrote it?
- 7 THE WITNESS: The response says that Dr. Karron, with
- 8 the aid of, wrote it.
- 9 THE COURT: Dr. Karron, with the aid of Mr. Spitz?
- THE WITNESS: On page, on page one of 38.
- 11 THE COURT: All right. Thank you.
- 12 Q. So were there additional rebuttals, other than this
- 13 appendix? Were there other documents submitted besides this
- rebuttal that we have here in appendix three?
- 15 A. After the final report? After the report was -- after the
- 16 draft?
- 17 Q. No, when you received --
- 18 A. I don't recall any, any other.
- 19 Q. Well, do you recall telling Mr. Kwok on April 22nd, 2008
- that an 80 page rebuttal was submitted?
- 21 A. I don't recall.
- 22 Q. Let me show it to you. You met with Mr. Kwok on April --
- 23 I'm sorry -- April 22nd, correct?
- 24 A. I don't recall the date.
- Q. I show you what's -- when you met with Mr. Kwok, did he SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

- 1 take notes when he spoke to you?
- 2 A. I don't recall if he took notes.
- 3 O. All right. I'm going to show you what's been marked as
- 4 3502B and identified as defendant's exhibit I for
- 5 identification and ask you to look at the second page where I
- 6 have a number ten on the right-hand side and see if that
- 7 refreshes your recollection as to telling Mr. Kwok that an 80
- 8 page rebuttal was submitted?
- 9 A. I don't recall saying an 80 page rebuttal was submitted.
- 10 Q. Okay. Now, do you have any calculation for the, for the
- 11 total amount of fringe benefits that were expended?
- 12 A. Total amount -- yes.
- 13 Q. And what was the total amount --
- 14 A. For --
- 15 Q. -- of fringe benefits that were expended by CASI?
- 16 MR. KWOK: Your Honor, if I could direct the witness'
- 17 attention to government exhibit 114 and 115.
- 18 (Handing)
- 19 THE COURT: It's 10 after 11:00. While you're
- 20 conferring, let's have the jury take a break while you confer
- 21 and get your examination together.
- 22 (Jury exits the courtroom)
- 23 (Continued on next page)

24

25

866zkar2 Riley - cross

- 1 (In open court; jury not present)
- THE COURT: All right, are you near the end?
- 3 MR. RUBINSTEIN: Unfortunately not, Judge, because I
- 4 can't get yes or no answers, and --
- 5 THE COURT: You can get yes or no answers.
- 6 MR. RUBINSTEIN: All right.
- 7 THE COURT: All you have to do is ask for them, you'll
- 8 have them.
- 9 MR. RUBINSTEIN: I'll do that.
- 10 THE COURT: All right, thank you.
- 11 (Recess)
- 12 THE COURT: All right, please be seated. Let's bring
- in the jury.
- 14 (Jury entering)
- THE COURT: Please be seated.
- 16 All right, Mr. Rubinstein.
- 17 BY MR. RUBINSTEIN:
- 18 Q. I had asked you before the break if you have a total of the
- 19 amount of fringe benefits that were paid by CASI?
- 20 THE COURT: In any year?
- 21 Q. If the year, first year in rent. We've established that
- they were authorized to pay 110,000, and the government gave
- 23 you exhibits one -- government Exhibit 114 and 115 for you to
- 24 refresh your recollection?
- 25 A. Correct. And so they have an allocation for 163,460,

SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

- 1 according to the checks.
- 2 Q. Pardon?
- 3 A. 160 -- 100 and -- in the checks written --
- 4 THE COURT: What are you looking at?
- 5 THE WITNESS: At the government 110.
- 6 Q. Looking at government 110?
- 7 THE COURT: Where in government 110? What?
- 8 THE WITNESS: Oh, I'm sorry. On page ten of 44. Page
- 9 ten, page ten.
- 10 THE COURT: 10 of 44?
- 11 THE WITNESS: 10 of 44.
- 12 Q. What was that page again, please?
- 13 THE COURT: Page ten of 44, Mr. Rubinstein.
- MR. RUBINSTEIN: Thank you.
- 15 THE COURT: What is 110 taken from, Ms. Riley; whose
- 16 records are you basing this on?
- 17 THE WITNESS: On the -- this document is the one we
- 18 did from the cancelled checks after last year -- after the
- 19 audit.
- 20 Q. So it's pages 110 and 111, is that -- I'm sorry, pages ten
- 21 and 11 of Exhibit 110, is that what you're referring to?
- THE COURT: She said page ten of 44.
- 23 Q. 10 of 44?
- 24 A. 10 of 44, yes.
- Q. What is your total amount of fringe benefits that was SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

- 1 claimed?
- 2 A. 158 -- I don't have that for a year.
- 3 THE COURT: Do you have it for --
- 4 THE WITNESS: The claims, the claimed amount is
- 5 158,576.
- 6 THE COURT: For what period?
- THE WITNESS: October 1, 2001 through June 27th, 2003.
- 8 Q. So that's for a year and nine months?
- 9 A. Yes.
- 10 Q. You do not have the -- they were entitled to 110,000 in
- 11 fringe benefits the first year, correct?
- 12 A. Correct.
- 13 Q. And they were entitled, I think, to 127,000 the second
- 14 year; am I correct or incorrect about that?
- 15 A. Correct.
- 16 Q. So that that would be over 230,000 for fringe benefits, and
- 17 that includes the payroll taxes, right?
- 18 A. Correct.
- 19 Q. How much of this figure was the payroll taxes; is that on
- the bottom of page 11?
- 21 A. How much of which figure?
- 22 Q. Of the, your 163,460.37 is your total fringe benefit
- 23 expenses, actual expenses, for 21 months of the grant, correct?
- 24 A. Can you repeat that?
- Q. The fringe benefits for -- from October 1st, 2001 to June SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

866zkar2 Riley - cross

1 30th, 2003, are reflected in this number that says, where it

- 2 says fringe benefits on the left, if you go across in bold
- 3 print, you go across that line, it says 129 detailed records?
- 4 MR. KWOK: What document, your Honor?
- 5 THE COURT: Yeah, let's -- we don't know what you're
- 6 reading from.
- 7 MR. RUBINSTEIN: I'm sorry, Judge.
- 8 THE COURT: You don't identify it.
- 9 MR. RUBINSTEIN: I'm sorry. I thought we were all --
- 10 THE COURT: It makes no sense for the record, Mr.
- 11 Rubinstein.
- 12 MR. RUBINSTEIN: I'm sorry, Judge. I thought we were
- 13 all on page ten of 44 of Exhibit 110. That's what we're
- 14 talking about.
- 15 THE COURT: She's testified to what it was. Let's go
- on, 160. It shows there, for the record, 163,460. Is that
- 17 correct, Ms. Riley?
- 18 THE WITNESS: Yes.
- 19 Q. For a 21 month period, starting --
- THE COURT: We've covered that.
- 21 Q. Okay. How much of that was withholding, payroll
- 22 withholding taxes that are considered fringe benefits?
- 23 A. 135,000.
- 24 THE COURT: How much?
- 25 THE WITNESS: One -- it's -- the employment tax amount SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

1 includes the, the employer's share, but it's 135,000 for the

- 2 total employment tax.
- 3 THE COURT: I'm sorry?
- 4 THE WITNESS: 135,000 on page 11 of 44.
- 5 THE COURT: Page 11 of 44?
- 6 THE WITNESS: Of 110.
- 7 THE COURT: All right.
- 8 Q. And so the non-payroll tax fringe benefits equal what?
- 9 A. Approximately 35 -- approximately \$30,000.
- 10 Q. Now, and you disallowed -- your recommendation was a
- disallowance of \$68,884, correct?
- 12 A. Correct.
- 13 Q. Because when you disallowed salary, you disallowed what the
- 14 percentage of payroll tax would be applicable to that salary,
- 15 correct?
- 16 THE COURT: Is that the reason you did it?
- 17 THE WITNESS: Repeat that, please?
- 18 Q. Yeah. When you disallowed salary, you know, like Gurfein's
- 19 25,000, Dr. Karron's 40 some odd thousand, you then disallowed
- 20 as allowable expense the payroll tax that was paid on that
- 21 \$71,000?
- 22 A. Correct.
- 23 Q. So that if the salary was in fact allowable, then the
- fringe benefit would've been allowable, correct?
- 25 A. Correct.

866zkar2 Riley - cross

1 Q. And did you disallow -- well, I'll withdraw that.

- Now, you also had a category of meals, correct?
- 3 A. Correct.
- 4 Q. And you had disallowance in that category?
- 5 A. Correct.
- 6 Q. You showed us an entire schedule related to meals, correct?
- 7 A. Correct.
- 8 Q. And did you ascertain whether or not -- withdrawn. It's
- 9 appropriate, if you have a business meeting, to -- meals are
- 10 deductible, are they not?
- 11 MR. KWOK: Objection. Deductible?
- 12 Q. Well, allowable. I'm sorry. Is that correct?
- 13 A. For what?
- 14 Q. Are meals an allowable expense if --
- 15 A. Approved by the budget.
- 16 Q. -- if discussing CASI business at a coffee shop?
- 17 THE COURT: Allowable grant expense?
- 18 THE WITNESS: No, not for discussing CASI.
- 19 THE COURT: What?
- 20 Q. Pardon?
- 21 THE COURT: Why not?
- 22 THE WITNESS: No. The meals -- the meals would not
- 23 be -- meals would depend.
- 24 Q. Pardon?
- 25 A. Meals -- they would -- for discussing CASI business, they SOUTHERN DISTRICT REPORTERS, P.C.

866zkar2 Riley - cross

- 1 would not be allowable.
- Q. On what theory?
- 3 A. Some --
- 4 Q. What auditing theory is there that says that a business
- 5 meeting conducted in a restaurant or in a board room where food
- 6 is supplied, is not an allowable expense?
- 7 A. They -- it would -- the some -- some may be allowable for --
- 8 for NIST expense.
- 9 THE COURT: What, I'm sorry?
- 10 A. To discuss NIST. But for meetings to discuss CASI business
- 11 expense --
- 12 Q. Well, the only business CASI had was NIST, correct?
- 13 A. All of the aspects of a NIST are not -- the
- 14 commercialization of the end product of the marketing strategy
- of the product you're creating is not an allowable expense,
- even though it's required by NIST for the grant.
- 17 Q. Did you inquire as to what any of these meal deductions
- 18 related to?
- 19 A. I, I've -- yes.
- 20 Q. And did you ascertain that in the computer at CASI with the
- 21 scanned invoices and checks, were also scanned receipts from
- 22 each one of these items that you say are -- that you list in
- 23 the meals category?
- 24 A. I don't recall if I have a specific sample from the food
- 25 category.

866zkar2

Riley - cross

- 1 Q. Is it fair to say, ma'am, that you just took the American
- 2 Express statement, monthly statements and just wrote down every
- 3 meal that was charged, or coffee or Chinese food or whatever,
- 4 right?
- 5 A. For the review of the end analysis of checks, yes.
- 6 Q. The analysis of the American Express, there were no checks
- 7 written for these, quote, meals, correct?
- 8 A. Correct.
- 9 Q. They were paid for by the American Express card, right?
- 10 A. Correct.
- 11 Q. Now, did you ever request any backup to show what -- who
- was present when these funds were expended?
- 13 A. I don't recall.
- 14 Q. Well, let me show you what's been marked for identification
- 15 as defendant's -- I show you what's been marked as defendant's
- 16 exhibit CCC.
- MR. RUBINSTEIN: Here, your Honor.
- 18 (Handing)
- 19 THE COURT: Thank you.
- 20 (Continued on next page)

21

22

23

24

25

8667KAR3 Riley - cross

- 1 BY MR. RUBINSTEIN:
- 2 Q. I show you what's been marked for identification as CCC.
- 3 Are you familiar with that document, ma'am?
- 4 A. I don't recall.
- 5 Q. Well, why don't you take a look at Government Exhibit 110,
- 6 page 24 of 37. In the middle of the page you have a Moonstruck
- 7 East restaurant on 4/5/03, right?
- 8 A. Correct.
- 9 Q. In the amount of \$50, right?
- 10 A. Yes.
- 11 Q. And that's in the amount of \$50, correct?
- 12 A. Sorry. What?
- 13 Q. CCC --
- 14 A. Yes.
- 15 Q. Is that the receipt for the same date and the same amount
- 16 --
- 17 A. Yes.
- 18 Q. -- that you have in your exhibit?
- 19 A. Yes.
- Q. And you never saw this before, correct?
- 21 A. CCC?
- 22 O. Yes.
- 23 A. I don't recall seeing this before.
- Q. Did you ever ask for any documentation of any of the meals
- 25 that you disallowed?

8667KAR3 Riley - cross

- 1 A. I don't recall.
- 2 Q. Page 2, do you see what's reflected on page 2 of that
- 3 document, CCC?
- 4 A. Oh, yes.
- 5 MR. RUBINSTEIN: We offer CCC into evidence, your
- 6 Honor.
- 7 MR. KWOK: Objection.
- 8 THE COURT: CCC is admitted into evidence.
- 9 (Defendant's Exhibit CCC received in evidence)
- 10 Q. Do you see on the second page it says dinner meeting,
- 11 correct?
- 12 A. Yes.
- Q. And do you recognize Dr. Karron's signature?
- 14 A. Yes.
- 15 Q. And do you recognize -- there are two other signatures
- 16 there, correct?
- 17 A. Correct.
- 18 Q. Do you recognize either of those signatures?
- 19 A. I -- no.
- 20 THE COURT: She doesn't recognize any of the
- 21 signatures.
- 22 MR. RUBINSTEIN: I just want to exhibit that to the
- 23 jury, your Honor. That's the rear portion of the receipt.
- Q. Bottom line says dinner meeting. Above that is Dr.
- 25 Karron's signature, right, Ms. Riley?

8667KAR3 Riley - cross

- 1 A. Correct.
- Q. And above that are two other items, correct?
- 3 A. Correct.
- 4 Q. That you cannot identify?
- 5 A. Correct.
- 6 THE COURT: Let's move it along, Mr. Rubinstein. We
- 7 don't need all those extended conferences at the table there.
- 8 Let's please move it on. We don't need those extended waits
- 9 and extended time. We are losing a lot of time by that.
- 10 Q. Did you in fact go with Dr. Karron and Bob Benedict to
- 11 Christine's on June 25, 2003?
- 12 A. Yes.
- THE COURT: What? To where?
- MR. RUBINSTEIN: C-R-I-S-T-I-N-A-'-s.
- 15 Q. Did you go there?
- 16 A. I went to a restaurant with them.
- 17 THE COURT: You did go to a restaurant with them?
- 18 THE WITNESS: Um-hum.
- 19 Q. And did you -- the audit is deductible, correct? The cost
- of the audit is deductible.
- 21 THE COURT: The cost of whose audit?
- 22 Q. The payment for an auditor, Ms. Hayes in this case, is a
- 23 deductible expense, allowable expense, under the NIST grant,
- 24 correct?
- 25 THE COURT: The cost for Ms. Hayes auditing the books SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR3 Riley - cross

1 is a deductible expense, that's true. Is that correct?

- 2 THE WITNESS: Yes, the cost of the audit is a
- 3 deductible expense.
- 4 Q. And in fact when you went to lunch -- rather, when you went
- 5 out with Dr. Karron and Ms. Hayes, Dr. Karron paid for that,
- 6 did he not?
- 7 A. Yes, I guess.
- 8 Q. I show you what's been marked --
- 9 THE COURT: Did he pay for it?
- 10 THE WITNESS: I guess. I guess.
- 11 THE COURT: You don't know.
- 12 THE WITNESS: I don't recall.
- 13 THE COURT: All right. Then answer that.
- 14 Q. Let me show you what's been marked as Defendant's N for
- identification and ask you to look at the front.
- 16 THE COURT: Please, let's move it along.
- 17 MR. RUBINSTEIN: Well, I'm waiting for an answer from
- 18 the witness.
- 19 THE COURT: What have you shown her?
- 20 MR. RUBINSTEIN: I have shown her Exhibit N, as in
- 21 Nancy. My wife's name.
- 22 THE COURT: Let me see it. I haven't gotten a copy.
- 23 MR. RUBINSTEIN: I'm trying to print it out now,
- 24 Judge.
- THE COURT: What date is it?

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1 MR. RUBINSTEIN: The date is June 25, 2003. It's

- 2 reflected on Government Exhibit 110, page 23 of 37.
- 3 THE COURT: All right.
- 4 Q. Ma'am, by looking at Exhibit N, does that refresh your
- 5 recollection?
- 6 A. Exhibit N?
- 7 O. Yes.
- 8 A. Yes.
- 9 Q. And, as a matter of fact, do you recall that you paid your
- 10 own share?
- 11 A. Yes.
- 12 Q. And so \$17 even was the share for Ms. Hayes, Mr. Benedict
- and Dr. Karron, correct?
- 14 A. This is showing that Ms. Hayes paid separately also.
- 15 Q. Ms. Hayes paid separately, OK. And that was during, while
- 16 you were there to do your field work.
- 17 A. Yes.
- 18 Q. Right?
- 19 A. Yes.
- 20 Q. You deducted -- you disallowed that meal, that \$17 on your
- 21 schedule, right?
- 22 THE COURT: Just yes or no.
- 23 A. Yes.
- Q. Did you feel that going and discussing -- you discussed
- 25 audit business, did you not?

8667KAR3 Riley - cross

- 1 A. Yes, we did.
- Q. Do you feel that that meeting, discussing audit business,
- 3 is not an allowable expense under NIST?
- 4 A. No.
- 5 Q. No what? It's not allowable?
- 6 A. It would be allowable.
- 7 THE COURT: It what?
- 8 THE WITNESS: Would be allowable.
- 9 THE COURT: It would be allowable.
- 10 THE WITNESS: If there was -- yes, it would be
- 11 allowable.
- 12 MR. RUBINSTEIN: We offer Defendant's N into evidence.
- 13 MR. KWOK: Objection, your Honor. The witness has not
- 14 authenticated the document.
- 15 THE COURT: Let me see the document.
- 16 Q. Did you sign the back of that, ma'am? Is that your
- 17 signature on the back?
- 18 THE COURT: Is that your signature, or is that someone
- 19 else's writing?
- THE WITNESS: It's not my signature.
- 21 Q. But that is the expense that you have on your sheet, do you
- 22 not? That is for the same date, the same amount, the same
- 23 restaurant that you have listed in Exhibit 110, correct?
- 24 THE COURT: I am allowing it into evidence. Let's go
- ahead.

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- 1 MR. RUBINSTEIN: OK.
- 2 THE COURT: What page is this on?
- 3 MR. RUBINSTEIN: Page 23 of 37, your Honor, near the
- 4 top quarter of the page.
- 5 THE COURT: All right.
- 6 Q. Now, in addition to that, you have on page 22, number 37 of
- 7 Exhibit 110, you have expenses for a restaurant Benjamin's. Do
- 8 you see that? It says 530 is the number on the left-hand side.
- 9 THE COURT: What page?
- MR. RUBINSTEIN: Page 22 of 37.
- 11 THE COURT: Go ahead. What date are you referring to?
- 12 Q. Do you know what the first visit to Benjamin's was at
- 13 November 5, 2002?
- 14 THE COURT: Did you ever ask about November 5, 2002?
- THE WITNESS: I don't recall.
- 16 Q. Well, are you aware -- did you ever speak to -- withdrawn.
- 17 You spoke to Ms. Lide and Ms. Orthwein of NIST ATP,
- 18 correct?
- 19 A. Yes.
- 20 Q. Are you aware as you sit there now whether or not they went
- 21 with Dr. Karron to Benjamin's restaurant when they came for
- their site visit at CASI?
- 23 A. I don't know what they did.
- 24 Q. Now, you got these expenses from the American Express card,
- 25 correct?

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- 1 A. Correct.
- Q. And were there meals charged every day to the American
- 3 Express card?
- 4 A. No.
- 5 Q. As a matter of fact, Dr. Karron had another credit card,
- 6 did he not?
- 7 A. A personal -- yes.
- 8 Q. He had a Mastercard, right?
- 9 A. Yes.
- 10 Q. Have you ever reviewed his Mastercard records?
- 11 A. No.
- 12 Q. Either in your Government Exhibit 110 or Government Exhibit
- 13 111 you have a Mastercard schedule, do you not?
- 14 A. I have an American Express schedule.
- 15 Q. No Mastercard.
- 16 A. No.
- Q. And you never saw a Mastercard schedule?
- 18 A. I don't recall seeing a Mastercard schedule.
- 19 THE COURT: Let's move this along, Mr. Rubinstein.
- MR. RUBINSTEIN: Yes, your Honor.
- 21 Q. And the equipment -- sorry, supplies, did you disallow
- 22 supplies?
- 23 A. Yes.
- Q. And how much supplies did you disallow?
- 25 A. Supplies, 24,000.

8667KAR3 Riley - cross

1 THE COURT: Which year are we talking about?

- 2 MR. RUBINSTEIN: The first year of the grant.
- 3 A. Oh, the first year? That's total grant.
- 4 THE COURT: It's the total grant.
- 5 MR. RUBINSTEIN: Pardon?
- 6 THE COURT: You have to move this along. I mean you
- 7 are putting me to sleep, Mr. Rubinstein. Let's move it along.
- 8 All right? I'm only going to allow you another 15 or 20
- 9 minutes. That's it.
- 10 MR. RUBINSTEIN: I agree with you, Judge.
- 11 THE COURT: Let's go.
- 12 Q. You disallowed utilities, did you not?
- 13 A. Disallowed utilities?
- 14 Q. Yes.
- 15 A. Yes.
- 16 Q. Are you aware that there were discussions between Dr.
- 17 Karron and NIST as to whether to allow a portion of the
- 18 utilities?
- 19 A. Yes.
- 20 THE COURT: When? All right.
- 21 Q. And is it fair to say that you determined that a portion of
- the utilities should be allowable?
- 23 MR. KWOK: Your Honor, is it an audit, or is it an
- 24 analysis based on the bank statements? I don't know what
- 25 Mr. Rubinstein is asking.

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1 THE COURT: The audit? Are you addressing the audit,

- 2 Mr. Rubinstein?
- 3 MR. RUBINSTEIN: Yes.
- 4 THE COURT: In the audit, did you say that some -- did
- 5 you determine that a portion of the utilities should be
- 6 allowable? Yes or no? Yes or no?
- 7 THE WITNESS: No.
- 8 THE COURT: All right.
- 9 Q. And what about education?
- 10 A. No.
- 11 Q. You disallowed all the education, right?
- 12 A. Right.
- 13 Q. Even if the education was related to the NIST ATP project,
- 14 correct?
- 15 THE COURT: Were you advised that any of it related to
- 16 the project?
- 17 THE WITNESS: Yes.
- 18 THE COURT: What?
- 19 THE WITNESS: Yes.
- THE COURT: What portion?
- 21 THE WITNESS: One of the costs was for a student.
- 22 There were two educational costs, and I think one was for a
- 23 student.
- 24 THE COURT: One was for a student.
- THE WITNESS: The Ph.D student, right? A student

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- 1 employee that Dr. Karron had.
- Q. And another one was Joan Hayes going to a seminar to learn
- 3 about auditing for federal grants, correct?
- 4 A. Correct.
- 5 Q. You disallowed both of them, correct?
- 6 A. Correct.
- 7 Q. Now, you could permit fringe benefits either under the
- 8 budget item or it could be chargeable to others, right?
- 9 A. Correct.
- 10 Q. By the way, there was some talk about medical bills. Do
- 11 you know when Dr. Karron had surgery?
- 12 THE COURT: Did you know he had surgery at all?
- 13 THE WITNESS: I knew he had surgery. I don't know
- 14 when.
- 15 Q. Isn't it a fact that it was after the grant was suspended?
- 16 A. I don't know when.
- 17 THE COURT: The surgery was or that she learned of it?
- 18 Q. Did you see any expense, medical expense, for surgery for
- 19 Dr. Karron?
- 20 MR. KWOK: When?
- 21 Q. When you did your audit.
- 22 A. There were medical expenses for Dr. Karron.
- Q. Did you see anything for surgery?
- 24 A. I don't recall seeing anything specifically, what
- 25 everything was.

8667KAR3 Riley - cross

1 Q. Now this audit that NIST requires, requires an independent

- 2 auditor, correct?
- 3 A. Correct.
- 4 Q. And they had Ms. Hayes, correct?
- 5 A. Correct.
- 6 Q. In fact you were aware that Ms. Hayes did Dr. Karron's
- 7 personal tax returns, were you not?
- 8 A. I don't recall if I knew that at the time or not.
- 9 Q. Would that disqualify her as an independent auditor?
- 10 MR. KWOK: Objection.
- 11 THE COURT: Did you allow the expense for her as an
- independent auditor?
- 13 THE WITNESS: Yes.
- 14 THE COURT: You did. Objection sustained.
- 15 Q. My question is she created records that she gave to you,
- 16 correct?
- 17 A. Correct.
- 18 Q. Now, is it fair to say that the person that does the
- 19 audit -- in this case Ms. Hayes -- is supposed to be an
- 20 independent auditor?
- 21 A. Correct. Correct.
- 22 Q. Because she might have some interest if she wasn't
- 23 independent, correct?
- 24 A. Correct.
- Q. In this case were you aware whether or not she was involved SOUTHERN DISTRICT REPORTERS, P.C.

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- in management decisions?
- THE COURT: Do you know?
- 3 THE WITNESS: I'm not sure how much her involvement
- 4 was.
- 5 THE COURT: Sorry?
- 6 THE WITNESS: I don't -- I don't know.
- 7 THE COURT: You didn't know that.
- 8 THE WITNESS: I don't know about her.
- 9 Q. Are you familiar with Quick Books, the system Quick Books?
- 10 A. Yes.
- 11 Q. Were you familiar with them in 2003 when you did this
- 12 audit?
- 13 A. No.
- 14 THE COURT: You weren't familiar with the --
- THE WITNESS: I'm not familiar --
- 16 THE COURT: -- with that system of bookkeeping?
- 17 THE WITNESS: No, I'm not familiar. I wasn't familiar
- 18 with that system of bookkeeping.
- 19 Q. Now, you told this jury -- how much money of Dr. Karron was
- 20 attributable as a cofund by Dr. Karron?
- MR. KWOK: Objection.
- 22 THE COURT: Sorry. Could I hear the question.
- 23 Q. Yeah. How much money do you say was contributed by Dr.
- 24 Karron as his contribution to the NIST ATP project?
- 25 A. Nothing.

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1 Q. Do you recall testifying here and saying it was very small,

- 2 between \$1200 and \$1500?
- 3 THE COURT: That's not my recollection of the question
- 4 and testimony as to his contribution.
- 5 Q. Well, you said it was miscellaneous. Do you recall that?
- 6 A. Yes.
- 7 Q. And do you have a schedule of what you say were
- 8 miscellaneous contributions?
- 9 THE COURT: Is the answer yes?
- 10 THE WITNESS: Yes. I'm sorry. Yes.
- 11 THE COURT: Do you want her to look it up?
- 12 MR. RUBINSTEIN: No, your Honor, I want to move along.
- 13 Q. How much was in the bank in the beginning of October, in
- the CASI accounts in the beginning of October 2001?
- 15 A. I don't recall. Is there a bank statement?
- 16 Q. Well, let me show you what's been marked as Defendant's O.
- 17 THE COURT: Defendant's O for identification.
- 18 MR. RUBINSTEIN: I'm sorry. I will withdraw that.
- 19 Q. Do you know what sunk costs are?
- 20 A. What?
- Q. Do you know what sunk costs means?
- 22 A. No.
- THE COURT: Sunk costs?
- MR. RUBINSTEIN: S-U-N-K costs.
- 25 A. No.

8667KAR3 Riley - cross

1 Q. Do you know whether or not purchases made for the grant,

- that were made prior to the grant's start of October 1, 2001,
- 3 were paid after October 1, 2001, whether or not those are
- 4 proper expenditures under the grant?
- 5 A. Grants paid prior to the grant award need written
- 6 permission.
- 7 THE COURT: Sorry? Witness.
- 8 A. Payments made prior to the grant award need written
- 9 approval by NIST. They need written approval. Is that what
- 10 we're asking? Costs that were before the award? ATP costs
- 11 that were made prior to the award, is that allowable in the
- 12 grant? If the grant award document allows it.
- 13 THE COURT: If you have written approval.
- 14 THE WITNESS: Yes, if you have written approval.
- 15 Q. So, if you purchased something, if CASI purchased the Quick
- 16 Books software in September of 2001 and it was delivered after
- 17 the grant -- after October 1, 2001, and paid for in November of
- 18 2001, would that be an allowable or unallowable item?
- 19 A. If it was used for the ATP grant, it was part of the grant
- 20 cost it could be allowable.
- 21 THE COURT: It could be. On what condition?
- 22 THE WITNESS: If it's specifically for the ATP
- 23 project, the software for a specific accounting -- if the
- 24 business accounting is also done on that system it would not
- 25 necessarily be allowable, because the business should already

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- 1 have it in place as part of their business.
- Q. Did you entertain how much costs were incurred prior to the
- 3 October 2001 by CASI on behalf of the ATP NIST grant?
- 4 A. Specifically I used the books provided, and whatever they
- 5 requested was considered. So if it's a cost that was prior to,
- 6 it would have been considered if it was on the books, because I
- 7 think they went to the check to cash basis, so they would have
- 8 paid --
- 9 THE COURT: Sorry. What did you say?
- 10 THE WITNESS: I think Mr. Spitz had moved to the cash
- 11 basis, so if it was included as payment it would have been one
- of the things claimed, probably under equipment or supplies,
- and would be over budget, so it would be over budget.
- 14 Q. How about the cost share provided by donating equipment, is
- 15 that permissible?
- 16 A. If it's specifically NIST ATP project costs, yes.
- 17 Q. Did you make any allowance -- withdrawn.
- 18 Were you aware whether or not Dr. Karron had computers
- 19 and equipment prior to the ATP grant?
- 20 A. Yes.
- 21 Q. Did you make any allowance to give him credit for his share
- of the contribution of about \$36,000 in the first year of the
- grant that he was supposed to contribute?
- 24 A. I asked for their cost share. No one put forth that as an
- answer.

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- 1 Q. No one mentioned that?
- 2 A. Right, no one came up -- no one provided documentation to
- 3 show that.
- 4 THE COURT: And no one said so?
- 5 THE WITNESS: Right. No one offered that. I don't
- 6 recall anyone offering that as a thing for match, but usually
- 7 you would have whatever you would go into a business, that
- 8 would not be what they considered their cost share or their
- 9 match share.
- 10 Q. Isn't it a fact that Mr. Spitz gave you backup to show when
- 11 the equipment was purchased?
- 12 A. Most -- I was under the impression that the equipment had
- 13 been replaced by the equipment purchased with this award.
- 14 Q. And who gave you that impression?
- 15 A. Various people that I spoke to, reviewing the invoices of
- 16 the equipment cost.
- Q. Now, it's your testimony that Dr. Karron did not contribute
- 18 any funds to the --
- 19 THE COURT: You've got about five minutes.
- 20 Q. I show you that Dr. Karron contributed nothing, no
- 21 financial funds to the grant. Is that your testimony?
- 22 A. Correct.
- 23 Q. You reviewed the checks, Dr. Karron's personal checks?
- 24 A. Correct.
- Q. And I show you what's been marked for identification as SOUTHERN DISTRICT REPORTERS, P.C.

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1 Defendant's FFF and ask you do you recognize what's contained

- 2 in that document?
- 3 A. Checks.
- 4 O. Pardon?
- 5 A. They're checks.
- 6 Q. Are those checks of Dr. Karron's on account ending 1665?
- 7 A. OK.
- 8 Q. Do you recognize those checks?
- 9 THE COURT: FFF.
- 10 O. FFF?
- 11 A. Yes.
- MR. RUBINSTEIN: We offer them in evidence, your
- 13 Honor.
- 14 THE COURT: FFF are admitted in evidence.
- MR. KWOK: No objection.
- 16 (Defendant's Exhibit FFF received in evidence)
- 17 Q. Now, I show you what's in evidence. This is copies of a
- 18 number of checks with the fronts and the backs. Now, do you
- 19 see that exhibit, ma'am?
- THE COURT: This is part of FFF?
- MR. RUBINSTEIN: Yes, your Honor.
- 22 A. Yes.
- Q. Do you see what date that is?
- 24 A. 10/11/2001.
- Q. And who is the payee?

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- 1 A. Computer Aided Surgery.
- Q. And is there a memo on there?
- 3 A. Emergency loan to the Computer Aided Surgery.
- 4 Q. So, that's \$2,000 that was -- and Computer Aided Surgery,
- 5 Inc is the account that NIST expenses were being made out of,
- 6 right?
- 7 THE COURT: Sorry?
- 8 A. Yes.
- 9 Q. NIST expenses were being paid at that time out of this
- 10 account.
- 11 A. Yes.
- 12 Q. And in fact this is prior to the time that any NIST monies
- 13 were transferred to Dr. Karron.
- 14 A. Yes.
- THE COURT: To what account?
- MR. RUBINSTEIN: Any account.
- 17 THE COURT: This is prior to the time that any money
- 18 was paid to that account?
- 19 MR. RUBINSTEIN: Correct. I think the first time was
- 20 October 25, if I'm not mistaken.
- 21 Q. Now, I show you this check marked 1052 as part of Exhibit
- 22 FFF. See if you recognize that check.
- 23 A. Yes.
- Q. And that is also a check made to Computer Aided Surgery
- Inc. in the amount of \$1,000, correct?

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- 1 A. Correct.
- Q. And it says the memo is emergency loan to corporation.
- 3 Right?
- 4 A. Right.
- 5 Q. And again that's the corporation that's paying NIST bills,
- 6 right?
- 7 A. At this time -- when did the ATP account come into
- 8 existence?
- 9 THE COURT: I can't hear you.
- 10 THE WITNESS: It may have been --
- 11 Q. And on August 12, 2002 Dr. Karron's personal check number
- 12 1121 was payable to CASI, Computer Aided Surgery, Inc.?
- 13 A. Yes.
- 14 Q. The memo is loan to the company?
- 15 A. Yes.
- 16 Q. So he is loaning his personal money to the company, right?
- 17 A. Yes.
- 18 Q. And how much is that check for?
- 19 A. \$20,000.
- 20 Q. Do you have any record in all of your records of any of
- 21 these checks so far?
- 22 A. Yes. Yes.
- Q. As contributions of Dr. Karron?
- 24 A. No, no.
- 25 THE COURT: You have records of the checks?

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- 1 THE WITNESS: Yes.
- THE COURT: Where?
- 3 THE WITNESS: They're -- they're both records
- 4 actually.
- 5 MR. KWOK: Your Honor, may we direct the witness to a
- 6 particular page of Government Exhibit 110?
- 7 THE COURT: Yes.
- 8 MR. KWOK: Government Exhibit 110, page 38 of 44.
- 9 Q. So, is it fair to say in reviewing your record that you
- 10 have a total of \$37,000 attributable to contributions made by
- 11 Dr. Karron, is that right?
- 12 A. I considered them loan repayment to the \$129,000 that he
- 13 had taken from the NIST ATP account.
- 14 Q. Pardon?
- 15 THE COURT: Repeat your answer. You speak very
- 16 quickly, and you just rattle it off. All right?
- 17 A. OK. I attributed the \$37,000 payments as loan repayments
- 18 to the \$129,850 that Dr. Karron had taken as loans from the
- 19 NIST ATP grant.
- 20 Q. Time out. Dr. Karron took \$75,000 loan in October or early
- 21 November 2001, after he got \$150,000 from NIST ATP, correct?
- 22 A. Correct.
- 23 Q. You did your analysis when?
- 24 A. Which analysis?
- Q. When did you do your analysis?

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- 1 A. I --
- 2 Q. When did you make that determination that these were
- 3 repayment of a loan?
- 4 A. Initially back --
- 5 Q. In June of '03?
- 6 A. December of '03.
- 7 Q. December of '03?
- 8 A. Or June of '03.
- 9 THE COURT: Well, wait a minute. She hasn't finished.
- 10 A. Wait. What's the --
- 11 THE COURT: What's the rest of your answer?
- 12 THE WITNESS: June of '03.
- THE COURT: Pardon?
- 14 THE WITNESS: June of 2003.
- THE COURT: June of 2003.
- 16 Q. Isn't it a fact, ma'am, that in August and September of
- 17 2002 Dr. Karron repaid that money out of his salary in fact?
- 18 A. The repayments of the salary were part of expenditures that
- 19 were also disallowed. It depends on which --
- 20 Repeat your question.
- 21 Q. In August of '02 did you see an entry on August 2, 2002 of
- 22 \$61,918.07 as salary to Dr. Karron?
- 23 THE COURT: What are you referring to, Mr. Rubinstein?
- Is it an exhibit in evidence? What is it?
- Q. Did you calculate at any time the monies received as salary SOUTHERN DISTRICT REPORTERS, P.C.

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in a schedule, salaries received by Dr. Karron?

- 2 THE COURT: I don't understand the question.
- 3 MR. RUBINSTEIN: He received payment.
- 4 THE COURT: I just want to hear the question phrased
- 5 so that it's understandable.
- 6 MR. RUBINSTEIN: The question is did this witness
- 7 prepare a schedule showing the salary checks of Dr. Karron from
- 8 October 1, 2001 until September 30, 2002, the first year of the
- 9 grant?
- 10 THE COURT: What time are you asking?
- 11 MR. RUBINSTEIN: During that year, the first year of
- 12 the grant.
- 13 THE COURT: During the year -- October 1, 2002.
- MR. RUBINSTEIN: 1, October 1, 2001.
- 15 THE COURT: 2001 to September 30, 2002, did you
- prepare a schedule? Is that your question?
- 17 MR. RUBINSTEIN: Yes.
- 18 THE COURT: Of his salary for that year?
- MR. RUBINSTEIN: Right.
- 20 THE COURT: Were you assigned to the audit in that
- 21 period of time?
- 22 THE WITNESS: I did the audit starting June of 2003.
- 23 THE COURT: So, you couldn't have done anything during
- 24 that first fiscal year, is that right?
- THE WITNESS: Right, yes.

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1 THE COURT: You didn't prepare any schedules during

- 2 the first fiscal year.
- 3 THE WITNESS: Right.
- 4 THE COURT: Do you want to reframe your question,
- 5 Mr. Rubinstein?
- 6 Q. Do you know what a schedule is, ma'am?
- 7 MR. KWOK: Objection.
- 8 THE COURT: Objection sustained. Five more minutes.
- 9 Five more minutes, that's it.
- 10 MR. RUBINSTEIN: Judge, it's not fair.
- 11 THE COURT: Five minutes.
- MR. RUBINSTEIN: I'm not getting answers.
- 13 THE COURT: You're getting answers; you're not asking
- 14 questions. You're dawdling around there in the back of the
- 15 courtroom.
- MR. RUBINSTEIN: I am not.
- 17 THE COURT: And you're not asking questions. Now ask
- 18 questions and do it quickly.
- 19 Q. How many checks did Dr. Karron receive in the first year of
- the grant for salary?
- 21 A. I don't recall.
- Q. Do you have any notes or notations?
- 23 A. I have it in this document I prepared in 2004. I don't
- 24 have --
- 25 Q. You have a figure in Government Exhibit 114 and 115.

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- 1 That's the backup for that?
- 2 A. This document is the backup for the 114 and 115, and in the
- 3 first year of the grant --
- 4 THE COURT: And you are looking now at Exhibit 110?
- 5 THE WITNESS: Yes.
- 6 THE COURT: All right. Where in 110? Can we point to
- 7 a page where his salary is listed? Can the government point me
- 8 to a page? Let's move this on.
- 9 THE WITNESS: Payroll is on page 39 of 44.
- 10 THE COURT: Page 39 --
- 11 THE WITNESS: Of 44.
- 12 THE COURT: Thank you very much.
- 13 Q. And how much did Dr. Karron -- how much was he paid in that
- 14 year, the first year of the grant?
- 15 A. It shows net salary of \$35,000.
- MR. KWOK: Your Honor, I think there is a confusion of
- 17 the date. I think the witness is looking at the database for
- 18 year two. I think Mr. Rubinstein is asking information about
- 19 year one. Oh, I'm sorry, I take that back. I take that back.
- 20 Q. So you show \$35,000. Is that net or gross paid that Dr.
- 21 Karron received?
- 22 A. Net.
- 23 Q. That's after you deducted 45,000 as disallowed? Is that
- what you're saying?
- 25 A. He also received \$129,000 that he called loans.

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1 Q. Didn't he have a salary of \$14,000 a month?

- 2 A. I don't know.
- 3 O. Are you aware of the fact that on September 2 -- sorry --
- 4 August 2, 2002 Dr. Karron, there was an entry on the books of
- 5 CASI showing payment to Dr. Karron of \$61,000 and change?
- 6 A. For?
- 7 Q. Salary.
- 8 A. But --
- 9 MR. KWOK: What page, your Honor?
- 10 THE COURT: Yes.
- 11 MR. KWOK: What exhibit?
- 12 THE COURT: You're referring us to, Ms. Riley, to page
- 13 38 of 49, and the top of the page you have loan and bottom of
- 14 the page you have loan repaid.
- 15 THE WITNESS: Right.
- 16 THE COURT: And on the next page it says payroll. So
- 17 basically the checks -- then you have payroll on the next page.
- 18 THE WITNESS: Specifically identified as payroll on
- 19 the checks when I looked at them in 2004 and 5.
- 20 THE COURT: According to your analysis of the checks,
- 21 the only ones that were made for payroll are the ones on page
- 22 39 of 44?
- THE WITNESS: Yes.
- 24 THE COURT: And the others.
- Q. Let me show you these exhibits.

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(212) 805-0300

8667KAR3 Riley - cross

1 THE COURT: Well, look, just let me clear this up. We

- 2 heard about the \$75,000 loan in October. On what basis did you
- determine that the other amounts were loans by Dr. Karron?
- 4 Based on the entries of the check or what?
- 5 THE WITNESS: It's noted in the check memo, some of
- 6 them from their check registers or general ledgers.
- 7 THE COURT: Sorry.
- 8 THE WITNESS: From their records, from their check
- 9 registers or their ledgers.
- 10 THE COURT: From their ledgers?
- 11 THE WITNESS: From the ledgers or check registers
- 12 provided by CASI to me.
- 13 Q. Let me show you this document, Defendant's Exhibit P for
- 14 identification. Is this the document that was provided to you
- as a register by CASI?
- 16 A. I don't recall.
- 17 Q. Isn't it a fact on the records of CASI there was an entry
- on August 2, 2002 for a payment of salary of \$61,000 and change
- 19 to Dr. Karron?
- 20 MR. KWOK: Objection. The witness says she doesn't
- 21 recall.
- 22 THE COURT: I don't know what she saw because I wasn't
- 23 provided with a copy of it. Can I have a copy?
- I'm going to sustain the objection.
- 25 All right.

8667KAR3 Riley - cross

1 MR. RUBINSTEIN: I offer in evidence, your Honor, as

- 2 P-1, 2, 3, 4, 5, 6.
- 3 THE COURT: What?
- 4 MR. RUBINSTEIN: Checks, P-1 through P6.
- 5 THE COURT: As what Exhibit?
- 6 MR. RUBINSTEIN: I said it's P-1 through P-6.
- 7 THE COURT: Oh, Defendant's Exhibits P-1 for
- 8 identification through P-6 for identification.
- 9 Q. I show you these checks and ask you if you recognize these
- 10 checks, ma'am.
- 11 A. Are those -- yes.
- 12 Q. And are those --
- 13 MR. RUBINSTEIN: We offer them into evidence, your
- 14 Honor.
- MR. KWOK: No objection.
- 16 THE COURT: Defendant's P-1 through P-6 admitted in
- 17 evidence.
- 18 (Defendant's Exhibits P-1 through P-6 received in
- 19 evidence)
- 20 Q. Do you know of any additional checks that were given to
- 21 doctor -- withdrawn. Those checks have a memo as to payroll
- 22 periods, correct?
- 23 A. Correct.
- Q. And they are payroll checks payable to Dr. Karron, correct?
- 25 A. Correct.

8667KAR3 Riley - cross

1 Q. And they start on May 11, 2002, correct?

- 2 A. Correct.
- 3 O. And is it fair to say that on a \$175,000 salary, Dr. Karron
- 4 would be paid approximately \$14,000 a month gross?
- 5 A. Correct.
- 6 Q. And so if he borrowed \$75,000 in October, within five
- 7 months he basically would pay that back, correct?
- 8 THE COURT: Answer, please.
- 9 Q. 14 times five is 70, correct?
- 10 A. Yes.
- 11 Q. And October, November, December, January, February, by the
- end of February he would have basically paid back the 75,000,
- 13 correct?
- 14 A. For the gross, correct.
- 15 Q. And in May he got a net check for \$5,019.84, right?
- 16 A. Correct.
- 17 Q. For a pay period April 1, '02 to April 30, '02, correct?
- 18 A. Correct.
- 19 O. And then --
- 20 THE COURT: Let me see. How much is that check?
- 21 MR. RUBINSTEIN: \$5,019.84.
- 22 In June he gets a check, memo pay period it says
- 3/1/02 to 5/31/02, in the amount of \$5,002.25.
- 24 In July he receives a check for the payroll period of
- December 1, 2001 to December 31, 2001, and that net amount of SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR3 Riley - cross

- 1 that check is \$9,288.07.
- 2 Also in July, on July 5 he receives a check, the
- 3 paycheck for the pay period November 1, 2001 to November 30,
- 4 2001, in the amount of \$4,756.38. Correct?
- 5 A. Correct.
- 6 Q. And the third check on the same day for the payroll October
- 7 1, 2001 to October 31, 2001 pay period, he received a check in
- 8 the amount of \$5,502.01, correct?
- 9 A. Yes.
- 10 Q. And then he received a check on August 2, 2002 for pay
- 11 period July 1, '02 to July 31, '02, in the amount of \$5,675.03,
- 12 correct?
- 13 THE COURT: Are those checks included in your
- schedule?
- THE WITNESS: Yes, sir.
- THE COURT: On page 39 of 44?
- 17 THE WITNESS: Yes, sir.
- 18 Q. And where was the rest -- if you pay taxes on those checks,
- 19 how much would have been the gross approximately?
- 20 MR. KWOK: Objection.
- 21 THE COURT: I don't think she should have to --
- 22 Q. Well, what happened to the rest of the \$175,000? Did he
- 23 receive any additional monies other than the 34, 35,000 that
- 24 are reflected in those checks?
- 25 A. Withholdings would have been paid through the company for SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR3 Riley - cross

- 1 those checks.
- Q. Would the withholdings be equal to the amount of the
- 3 checks?
- 4 A. No.
- 5 Q. Even if they were equal, you only have 70,000. We're still
- 6 missing 105,000, right?
- 7 A. Yes.
- 8 Q. Did you give him any credit for that missing salary that he
- 9 never got?
- 10 A. He got the loans. He still had more loans.
- 11 Q. Loans for what?
- 12 A. Whatever he withdrew the money for.
- 13 Q. You don't know, right?
- 14 A. I don't know.
- 15 Q. The only one we know about is the \$75,000.
- 16 THE COURT: Are the loans reflected on the books?
- 17 THE WITNESS: Yes. Well, they say loans. They don't
- 18 say what they're for.
- 19 THE COURT: Or draws?
- THE WITNESS: The loans say loans.
- Q. Show me some loans other than the \$75,000 loan. Not in
- 22 your books. Show me. Show me a check.
- MR. KWOK: Objection, your Honor.
- 24 THE COURT: All she has is the books.
- MR. RUBINSTEIN: Well, I want the backup.

SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR3 Riley - cross

1 MR. KWOK: It's in front of her in that box. Does

- 2 Mr. Rubinstein want the witness to dig through that box of
- 3 checks?
- 4 MR. RUBINSTEIN: Well, she did yesterday.
- 5 THE COURT: Are they readily available?
- 6 Q. Ma'am, in your schedule of Exhibit 114 --
- 7 THE COURT: She is looking. You asked for her to show
- 8 you.
- 9 MR. RUBINSTEIN: I'm going to withdraw that.
- 10 THE COURT: You asked for her to show you those
- 11 checks.
- 12 MR. RUBINSTEIN: I have a quicker way. She can do
- that on the government's time. All right?
- 14 Q. In your schedule Government Exhibit 114 you have salary to
- 15 Dr. Karron, correct?
- 16 A. Yes.
- 17 Q. Budgeted 175, right?
- 18 A. Correct.
- 19 Q. CASI spent \$200,488 on his salary. How did you get that
- 20 number?
- 21 A. By including the withholdings portion of the fringe
- 22 benefits as part of the salary of what he received. It
- 23 includes the salary, it includes the difference between the
- loans he received and the loans he paid, and it includes the
- 25 fringe benefits.

8667KAR3 Riley - cross

1 Q. You have fringe benefits listed separately, do you not,

- 2 ma'am?
- 3 A. I just have the items that are --
- 4 Q. Do you see 59,500 in fringe benefits?
- 5 THE COURT: She didn't finish her answer,
- 6 Mr. Rubinstein.
- 7 MR. RUBINSTEIN: She just said that the fringe
- 8 benefits are included, and I submit, your Honor, that on that
- 9 same schedule --
- 10 MR. KWOK: Objection.
- 11 MR. RUBINSTEIN: -- the fringe benefits are listed
- 12 separately as \$59,000.
- MR. KWOK: Objection.
- MR. RUBINSTEIN: \$59,500.
- THE COURT: You're not a witness.
- 16 MR. RUBINSTEIN: I'm asking if that's on her schedule,
- her exhibit, the Government's Exhibit 114.
- 18 THE COURT: Find out what you're dealing with and the
- 19 exhibit and I will allow your question, but I'm not allowing
- 20 that. And your time is up. So this is the last question.
- 21 MR. RUBINSTEIN: Judge, I'd ask you to give me ten
- 22 more minutes.
- 23 THE COURT: All right, ten minutes, and that is all.
- MR. RUBINSTEIN: Thank you.
- Q. You have on Exhibit 114 an expense for Dr. Karron's fringe SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR3 Riley - cross

- 1 benefits?
- 2 A. Yes.
- 3 O. And is that expense \$59,500? Do you see it on the
- 4 schedule? I only have ten minutes.
- 5 THE COURT: Just give her a minute.
- 6 MR. RUBINSTEIN: It's her schedule, Judge.
- 7 THE COURT: You're looking not on the schedule. You
- 8 are looking at a chart. Exhibit 114 is the pie chart.
- 9 MR. RUBINSTEIN: On the bottom is a break-down of
- 10 numbers, your Honor.
- 11 THE COURT: I agree with that, but let's refer to the
- 12 document as the pie chart, 114. Now what's your question?
- 13 Q. My question is: You just testified that the \$200,000 that
- 14 CASI spent on Dr. Karron for salary that you have here was
- 15 because of fringe benefits, correct?
- MR. KWOK: Objection.
- 17 THE COURT: I don't think that is her testimony.
- 18 Objection sustained.
- 19 Q. What was the extra 25,488, what is that attributable to?
- 20 THE COURT: The 200,488?
- MR. RUBINSTEIN: Well, it's an additional \$25,488. I
- 22 will take silence as an answer and move on.
- 23 THE COURT: Well, she has to look. You're asking her
- 24 to take her pie chart and then give you the backup for the pie
- chart, and she has to look to the exhibits to show where that

8667KAR3 Riley - cross

- 1 is.
- THE WITNESS: For year one, which number are you
- 3 asking about? 25?
- 4 THE COURT: Are you asking about the 25,000 or the
- 5 200,488?
- 6 MR. RUBINSTEIN: I am asking her how she explains that
- 7 Dr. Karron, where the additional -- of her number of 200,000,
- 8 with the additional 165,000 that she attributes to Dr. Karron,
- 9 where is that?
- 10 THE COURT: 165,000?
- 11 MR. RUBINSTEIN: Yeah. We only have checks of about
- 12 35,000.
- 13 THE COURT: Look, stop a second. What figure is
- 14 165,000, Mr. Rubinstein, that you're referring to?
- 15 Q. The checks P-1 through P-6 total about \$35,000, correct,
- 16 ma'am?
- 17 A. Correct.
- 18 Q. You have a figure CASI spent for Dr. Karron without fringe
- 19 benefits of \$200,488?
- 20 A. Correct.
- Q. You subtract 35,000 from 200,000, you come up with roughly
- 22 \$165,000, right? Yes or no?
- 23 A. Correct.
- Q. Do you have any documentation to show \$165,000?
- 25 A. This chart was prepared from the check register. The

SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR3 Riley - cross

1 200,000 comes from the loan -- the difference between the loan,

- 2 the loan pay back and the amount of salaries that he received,
- 3 plus the withholdings from applicable payroll, withholdings,
- 4 that would have been associated with his --
- 5 Q. The grant was suspended at your request, right?
- 6 A. Sorry. What?
- 7 Q. At your request the grant was suspended on June 27, 2003,
- 8 correct?
- 9 A. Correct.
- 10 Q. What were the monies owed by CASI to NIST suppliers at the
- 11 time the grant was suspended?
- 12 THE COURT: Do you know?
- 13 A. I don't recall.
- 14 Q. Did you make any kind of schedule -- they're called
- 15 payables, right? If you owe money and you didn't pay your
- 16 suppliers, is that what you call them?
- 17 MR. KWOK: Objection.
- 18 THE COURT: Let her give an answer before you ask a
- 19 second question.
- Now, what was the question you were asking?
- 21 MR. RUBINSTEIN: Did she make any list of payables,
- 22 monies owed by CASI, to suppliers who supplied product for the
- NIST ATP grant.
- 24 THE COURT: In July 2003.
- 25 THE WITNESS: I don't recall.

SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR3 Riley - cross

- 1 Q. Do you know after the grant was suspended whether or not
- 2 Dr. Karron invested additional money into the CASI project, yes
- 3 or no?
- 4 A. No.
- 5 THE COURT: Do you know whether he invested any money
- in the CASI project after the grant was suspended?
- 7 THE WITNESS: No.
- 8 THE COURT: I amended your question because it called
- 9 for two conclusions, Mr. Rubinstein.
- 10 MR. RUBINSTEIN: Pardon, your Honor?
- 11 Q. Isn't it a fact -- do you have any documentation that would
- 12 show whether or not Dr. Karron contributed any monies after the
- grant was suspended --
- MR. KWOK: Objection, relevance.
- THE COURT: Objection sustained.
- 16 Q. Well, when the grant was suspended, did NIST say that he
- 17 was short on his contribution?
- 18 MR. KWOK: Objection.
- 19 Q. Was the grant -- I will withdraw that.
- 20 Was the grant suspended because he was short on his
- 21 copay portion according to your audit --
- 22 THE COURT: In?
- 23 Q. In June 27, 2003?
- 24 A. Yes.
- Q. And in fact were you informed that he contributed \$60,000 SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR3 Riley - cross

- 1 in the beginning of July 2003?
- 2 THE COURT: You mean after the audit was complete?
- 3 MR. RUBINSTEIN: No, after the first audit, not the
- 4 final audit in December.
- 5 Q. In June 27 the grant is suspended, he doesn't get anymore
- 6 money, right?
- 7 A. Correct.
- 8 Q. He's got debts outstanding on behalf of NIST, right?
- 9 A. Correct.
- 10 Q. To get the grant restarted he is supposed to pay back
- 11 \$54,000, correct?
- 12 A. I think it was more than that, but he was supposed to pay
- 13 back an amount.
- 14 Q. All right. And is it fair to say he deposited more than
- 15 that amount in the CASI account and paid expenses of NIST with
- 16 that money after the grant was suspended?
- 17 MR. KWOK: Objection.
- 18 THE COURT: Do you know?
- 19 A. Was he asking me --
- 20 THE COURT: He is asking you if you know what happened
- 21 after the grant was suspended.
- 22 THE WITNESS: I know that some money was deposited.
- 23 Q. Now, you told us before that after your audit there is an
- appeals process, correct?
- 25 A. Correct.

8667KAR3 Riley - cross

1 Q. And there is a negotiation on what's allowable and

- 2 unallowable, correct?
- 3 A. Correct.
- 4 Q. Called a wrap report?
- 5 A. I'm not familiar with that term.
- 6 Q. Is it a fact -- was Dr. Karron or CASI ever afforded an
- 7 opportunity to have this audit reconciliation?
- 8 A. No.
- 9 THE COURT: She said no, and then the court reporter
- 10 said no, and then she said no.
- MR. RUBINSTEIN: I know that it's no. All right?
- 12 Q. So nobody reviewed your numbers from the ATP grant offices,
- 13 right?
- 14 A. I believe that's probably correct. They get a copy of my
- 15 report, so I don't know. I don't know.
- 16 Q. You told us that they're the ones that should have the
- 17 final say-so of what's allowable and what's not allowable in a
- 18 grant, right?
- 19 A. Correct.
- 20 Q. And what happened here is that the special agents jumped in
- 21 on this back in 2003, right?
- MR. KWOK: Objection.
- 23 THE COURT: Objection sustained.
- Q. And they made this from a civil matter into a criminal
- 25 matter, correct?

8667KAR3 Riley - cross

- 1 MR. KWOK: Objection. Objection.
- 2 THE COURT: Objection sustained.
- 3 Q. Well, is the audit resolution a civil procedure?
- 4 A. It's just a procedure.
- 5 Q. Yeah, where you sit down with the grant officers and
- 6 discuss whether or not certain expenses are allowed or
- 7 allowable or not?
- 8 A. Correct.
- 9 Q. That never happened here, right?
- 10 A. Sorry. What?
- 11 Q. It never happened here?
- 12 THE COURT: He says that never happened.
- 13 THE WITNESS: Correct.
- 14 THE COURT: You never sat down with him?
- 15 THE WITNESS: Oh --
- 16 MR. RUBINSTEIN: Is my ten minutes up, Judge?
- 17 THE COURT: What?
- 18 MR. RUBINSTEIN: I retire. I'm finished.
- 19 THE COURT: We will take a luncheon break.
- 20 Do you have any redirect?
- MR. KWOK: Very briefly.
- 22 THE COURT: It's got to be brief. I mean we have to
- 23 move this case along.
- MR. KWOK: Very brief.
- THE COURT: This is terrible. Juror 3 has got her SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR3	Riley -	cross
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- 1 eyes awake all the time, but I keep an eye on her because she
- 2 lies back in that chair.
- 3 All right. The jury is excused until ten after two.
- 4 Can I get away with five after two? Let's say five after two.
- 5 (Jury not present)
- 6 THE COURT: Is there anything to take up?
- 7 MR. RUBINSTEIN: No, your Honor.
- 8 MR. KWOK: No, your Honor, not at this time.
- 9 THE COURT: Well, let's be back 2 o'clock to take up
- 10 something then.
- 11 MR. EVERDELL: There is one matter. I note that
- 12 defendant has introduced CCC. I think there already is a
- 13 defense CCC in evidence, so I think we may have to rename that
- 14 DEPUTY COURT CLERK: I haven't seen them.
- 15 THE COURT: We have to keep track of these things
- 16 because this is a complex situation.
- 17 THE DEFENDANT: I don't think I've seen any of the
- 18 defense exhibits.
- 19 THE COURT: You have to mark them.
- 20 (Luncheon recess)
- 21 (Continued on next page)

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866zkar4

1	AFTERNOON SESSION
2	2:05 p.m.
3	THE COURT: All right, please be seated. Let's bring
4	in the jury, and the witness.
5	MR. KWOK: Very quick your Honor, hopefully.
6	THE COURT: I'll believe it when I see it.
7	(Jury entering)
8	THE COURT: I think your chair those carts are all
9	in the middle of the jury path.
10	(Jury present)
11	THE COURT: All right, please be seated.
12	Go ahead, Mr. Kwok.
13	MR. KWOK: Thank you, your Honor.
14	(Continued on next page)
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866zkar4

- 1 REDIRECT EXAMINATION
- 2 BY MR. KWOK:
- 3 Q. Ms. Riley, you remember on cross Mr. Rubinstein asking you
- 4 questions about meals?
- 5 A. Yes.
- 6 Q. And he showed you receipts of every meals that Dr. Karron
- 7 had with other people?
- 8 A. Yes.
- 9 Q. Ms. Riley, are meals a line item in the CASI budget
- 10 submitted to NIST for the grant?
- 11 A. No.
- 12 Q. Ms. Riley, you remember Mr. Rubinstein showing you checks
- 13 that Dr. Karron wrote to CASI?
- 14 A. Yes.
- 15 Q. Let's pull up government Exhibit 114.
- 16 Ms. Riley, did you take those checks into account in
- 17 your analysis for year one?
- 18 A. Yes.
- 19 Q. And still, what is the color represented in red there?
- 20 A. \$268,638.
- 21 Q. Let's pull up government Exhibit 115. In your --
- 22 THE COURT: I'm sorry, let me just see -- this is 114?
- MR. KWOK: 114, your Honor.
- 24 THE COURT: What is the total amount for what?
- MR. KWOK: Represented in the red.

SOUTHERN DISTRICT REPORTERS, P.C.

866zkar4 Riley - redirect

- 1 THE COURT: The rent?
- 2 MR. KWOK: Red, not rent.
- 3 THE DEPUTY CLERK: In the red, in the red.
- 4 MR. KWOK: Color red.
- 5 THE COURT: Red, oh.
- 6 Q. Let's turn now to government Exhibit 115?
- 7 A. Okay.
- 8 Q. Did you take those checks that Mr. Rubinstein showed you
- 9 into account in your analysis for year two?
- 10 A. Yes.
- 11 Q. And still what is the dollar amount represented in the
- 12 color red on your chart?
- 13 A. 196,504.
- 14 Q. Now, Ms. Riley, you remember Mr. Rubinstein also asking you
- 15 questions about cost share?
- 16 A. Yes.
- 17 Q. And he asked you about the equipment and how it might
- 18 relate to cost share?
- 19 A. Yes.
- Q. Let's pull up government exhibit 40A, 40A. Let's focus on
- 21 line I.
- 22 Ms. Riley, what information is called for on line I of
- 23 government exhibit 40A?
- 24 A. Cost share.
- 25 O. And what information is reflected -- what number is

SOUTHERN DISTRICT REPORTERS, P.C.

866zkar4 Riley - redirect

- 1 reflected on line I?
- 2 A. Zero.
- 3 O. If we could zoom out of --
- THE COURT: This is 40A?
- 5 MR. KWOK: 40A, your Honor.
- 6 THE COURT: And this is submitted by -- this isn't
- 7 your record, this is submitted by CASI?
- 8 THE WITNESS: Yes.
- 9 Q. Who submitted this form?
- 10 A. Yes, CASI submits this form to us.
- 11 THE COURT: All right.
- 12 Q. Could we zoom in on the signature block on the bottom of
- that? Whose signature appears on the bottom of that form?
- 14 A. Dr. Karron.
- 15 Q. Let's go to government exhibit 41A. Let's zoom into line
- 16 I. Again, what information is called for on line I?
- 17 A. Cost share.
- 18 Q. What is the number there?
- 19 A. Zero.
- 20 Q. Let's zoom out. Go to the second block. What signature
- 21 appears in the bottom?
- 22 A. Dr. Karron's.
- 23 Q. Go to 42A. What is the number shown for line I in 42A?
- 24 A. Zero.
- Q. And what signature appears on the bottom portion of that SOUTHERN DISTRICT REPORTERS, P.C.

866zkar4 Riley - redirect

- 1 form?
- 2 A. Dr. Karron.
- 3 Q. Go to 43A, line I?
- 4 A. Zero.
- 5 Q. Signature block, what signature appears there?
- 6 A. Dr. Karron's.
- 7 Q. Now, Ms. Riley, one last thing. Could you read the
- 8 certification above the signature block?
- 9 A. I certify, to the best of my knowledge and belief, that
- 10 this report is correct and complete and that all outlays and
- 11 unliquidated obligations are for the purposes set forth in the
- 12 award documents.
- MR. KWOK: No further questions.
- 14 RECROSS EXAMINATION
- 15 BY MR. RUBINSTEIN:
- 16 Q. When you consulted with Mr. Spitz in December of 2003, did
- 17 he discuss with you the meals issue?
- 18 A. I don't recall.
- 19 Q. Well, under the budget, isn't it a fact that there is a
- 20 category called "others"?
- 21 THE COURT: This is beyond the scope.
- MR. KWOK: Objection.
- 23 MR. RUBINSTEIN: I submit it's not. It was asked
- 24 about meals and whether there's a line item in the budget about
- 25 meals.

1 THE COURT: That is, the scope of the direct did not

- 2 have anything to do with meals.
- 3 MR. RUBINSTEIN: Yes.
- 4 THE COURT: Just go right ahead.
- 5 MR. RUBINSTEIN: Your Honor --
- 6 THE COURT: We have gone through meals already.
- 7 MR. RUBINSTEIN: I know that.
- 8 THE COURT: You are instructed not to go beyond the
- 9 direct. That is an order of the Court, that is a rule of
- 10 trials.
- MR. RUBINSTEIN: Absolutely, Judge.
- 12 THE COURT: You are to confine yourself to the
- 13 redirect of the government.
- MR. RUBINSTEIN: Right. But I submit, your Honor, if
- 15 you look at the transcript --
- MR. KWOK: Objection.
- 17 MR. RUBINSTEIN: I just asking your Honor to look at
- 18 the transcript.
- 19 THE COURT: Don't argue about it. You have an
- 20 instruction. If you want a sidebar, you can have it.
- MR. RUBINSTEIN: Yes, your Honor.
- (Continued on next page)

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- 1 (At the sidebar)
- 2 MR. KWOK: Your Honor, in my redirect I didn't ask a
- 3 single question about the audits. I simply asked a question
- 4 about whether line item -- where meals are a line item on the
- 5 budget, that's all I asked. I didn't go into audits, I didn't
- 6 go to meals, I don't know where he's going. On recross, he's
- 7 going to take another hour if we go this way.
- 8 MR. RUBINSTEIN: With their directs they shouldn't
- 9 complain. Your Honor should complain, but not them.
- 10 All right. They asked about meals, and I'm asking her
- 11 whether or not --
- 12 THE COURT: They didn't ask meals.
- 13 MR. RUBINSTEIN: Yes, they did. They said is there a
- 14 line item for meals.
- THE COURT: They didn't ask.
- MR. RUBINSTEIN: They did.
- 17 MR. EVERDELL: That's all I asked. I did ask that
- 18 question, but I just asked --
- 19 THE COURT: Did you, a line item? I didn't hear the
- 20 meals.
- 21 MR. RUBINSTEIN: So I'm asking if --
- 22 THE COURT: All right.
- MR. RUBINSTEIN: I can go into this.
- 24 THE COURT: I'll allow it.
- 25 (Continued on next page)

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 (In open court)
- 2 THE COURT: I thought the question was allowed with
- 3 respect to Exhibit 140. Is that the exhibit that the question
- 4 was asked about? No, not 140. I'm sorry.
- 5 THE DEPUTY CLERK: 114 and 115.
- 6 THE COURT: 114 and 115.
- 7 With respect to 114 and 115, I will allow it.
- 8 BY MR. RUBINSTEIN:
- 9 Q. Now, there is a category called others, is there not --
- 10 A. Yes.
- 11 Q. -- Ms. Riley?
- 12 A. Yes.
- 13 Q. And is it a fact that meals could be classified under the
- 14 line item called others?
- 15 THE COURT: The question isn't whether it could be.
- 16 The question is was it.
- 17 A. It was not.
- 18 Q. Was it?
- 19 A. It was not.
- Q. What was listed under others?
- 21 A. Auditing services.
- 0. Pardon?
- 23 A. Auditing services.
- Q. And what else?
- 25 A. Under others? That's all I recall.

SOUTHERN DISTRICT REPORTERS, P.C.

866zkar4 Riley - recross

- 1 O. Now --
- 2 A. I mean for what, for what? On the budget? The budget was
- 3 for auditing. Classified -- allowed for others, other cost in
- 4 the budget was audit costs. That was the only thing that was
- 5 allowed in the budget.
- 6 Q. There is a category called others. Is there a category
- 7 called audits, yes or no?
- 8 A. No.
- 9 Q. Is there a category called others, yes or no?
- 10 A. Yes.
- 11 Q. And can meals be considered under the category "others" if
- 12 it relates to the project?
- 13 THE COURT: There is a category called audit, isn't
- 14 there?
- THE WITNESS: There's others, yes.
- 16 THE COURT: Audit I said.
- 17 THE WITNESS: Oh, it was -- they -- no -- well, on
- 18 our, my chart may have a cost, but.
- 19 THE COURT: A chart has it?
- 20 THE WITNESS: The chart has --
- 21 THE COURT: What?
- THE WITNESS: The chart has that category.
- 23 THE COURT: Look at the chart, look at the exhibit I'm
- 24 talking about when you answer the question. Don't just dream
- about something else.

- 1 THE WITNESS: I thought we were talking about budget.
- 2 THE COURT: Not talking about budget, we're talking
- 3 about the exhibit.
- 4 THE WITNESS: Okay.
- 5 THE COURT: All right, the question that was asked
- 6 was about the exhibit 104 -- 114.
- 7 THE DEPUTY CLERK: 114.
- 8 THE COURT: 114.
- 9 THE WITNESS: 114.
- 10 THE COURT: And 115, those are the only questions.
- 11 THE WITNESS: Okay.
- 12 THE COURT: Now, you got a question, Mr. Rubinstein?
- 13 MR. RUBINSTEIN: Did we get an answer? That's all
- 14 I --
- 15 THE COURT: Well, I don't know what the question was.
- MR. RUBINSTEIN: Well, the question was could meals
- that are had relating to NIST ATP business meetings, can they
- 18 be allowable under the budget line others, yes or no.
- 19 THE COURT: You can ask about 114 and 115, that's all.
- 20 Q. Well, ma'am, you testified as to 41A, 42A and 43A, correct?
- 21 THE COURT: Yes, she did.
- 22 A. Yes.
- 23 Q. Line I?
- 24 A. Yes.
- Q. And is that what you would utilize to make a determination SOUTHERN DISTRICT REPORTERS, P.C.

866zkar4 Riley - recross

1 that the equipment could not be utilized as a cofunding

- 2 contribution?
- 3 MR. KWOK: Objection.
- 4 THE COURT: Let me get the exhibit. Objection
- 5 sustained. This document was filed by Dr. Karron. She didn't
- 6 prepare it. Dr. Karron prepared it.
- 7 MR. RUBINSTEIN: I asked if she --
- 8 THE COURT: Go ahead.
- 9 MR. RUBINSTEIN: If she utilized it.
- 10 THE COURT: All we're talking about is line I, that's
- 11 all.
- MR. RUBINSTEIN: Yeah, that's what I'm talking about.
- 13 Well, all right, Judge.
- 14 THE COURT: All right, the document was not prepared
- 15 by this witness. The document was prepared by Dr. Karron,
- 16 apparently. She cannot answer what was in that or should or
- 17 should not have been in that line.
- 18 MR. RUBINSTEIN: That wasn't the question, Judge. The
- 19 question was, did she review that to make a determination.
- 20 They brought it out on redirect like she had used that to make
- 21 her determination.
- MR. KWOK: Objection.
- 23 THE COURT: I don't -- objection sustained.
- Q. What were you asked about 41A, ma'am, by the Prosecutor?
- MR. KWOK: Objection.

- 1 THE COURT: Objection sustained.
- 2 MR. RUBINSTEIN: I'm asking her exactly what she was
- 3 asked.
- 4 THE COURT: We all heard what she was asked her.
- 5 MR. RUBINSTEIN: Objection.
- 6 THE COURT: She doesn't have to reply to that
- 7 question, now go ahead and ask a question if you're going to
- 8 ask one or the cross-examination, recross is over.
- 9 MR. RUBINSTEIN: With all due respect, Judge, could I
- 10 have a sidebar?
- 11 THE COURT: No, you may not at this point. The rules
- 12 apply to recross-examination and they're going to be strictly
- 13 adhered to, in light of the lengthy lengthy cross-examination
- 14 we've already heard.
- 15 MR. RUBINSTEIN: I'm going to ask for a limiting
- 16 instruction to the jury, your Honor, on that comment by your
- 17 Court. I think it was, in all due respect --
- 18 THE COURT: I don't know what to instruct them. All
- 19 I'm doing is stating the facts. If you want to have a sidebar
- 20 on that, I'll take a sidebar on that.
- MR. RUBINSTEIN: Yes, your Honor.
- (Continued on next page)

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866zkar4 Riley - recross

- 1 (At the sidebar)
- 2 THE COURT: If I got annoyed enough so I made some
- 3 misstatements, I'll correct it, but otherwise the rule is, and
- 4 you know it very well, that recross cannot exceed the redirect.
- 5 MR. RUBINSTEIN: I agree, Judge.
- 6 THE COURT: The scope.
- 7 MR. RUBINSTEIN: I agree, Judge. But when the
- 8 government, A, brings out is there a line item for meals and
- 9 she says no, I think I have a right to ask if it could come
- 10 under the category others, that's number one. Number two, when
- 11 the government --
- 12 THE COURT: A line.
- MR. RUBINSTEIN: -- brings out --
- 14 THE COURT: The inquiry, I believe, was was there a
- 15 meals category or a meals -- a figure for meals in those two
- 16 exhibits. She said no.
- 17 MR. RUBINSTEIN: They were asked specifically, Judge,
- 18 whether there's a budget line for meals. That's what they
- 19 asked. It's misleading because it doesn't have to be. It
- 20 could be under others and I feel I have a right to straighten
- 21 it out.
- 22 THE COURT: You can bring -- you brought that out.
- 23 MR. KWOK: You went past that already.
- MR. RUBINSTEIN: You objected to it and you sustained
- 25 it.

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1 THE COURT: We're here to --

- 2 MR. RUBINSTEIN: Okay.
- 3 THE COURT: -- based on your wanting me to correct
- 4 something that I may have said to the jury.
- 5 MR. RUBINSTEIN: Yes. The second that -- yeah, that
- 6 your Honor suggested that it was inappropriate for counsel to
- 7 cross-examine the length he did, particularly in view of the
- 8 fact that you limited me to --
- 9 THE COURT: It's not --
- 10 MR. RUBINSTEIN: -- in the kind and I don't think that
- 11 the jury -- that counsel has an absolute right to cross-examine
- just as the government has a right --
- THE COURT: You got --
- 14 MR. RUBINSTEIN: -- to show the same exhibits through
- 15 every witness, show the same exhibit on the screen. I
- 16 shouldn't be -- and as to the letter I in 40, in the A's
- 17 exhibits in the 40s, it says total --
- 18 THE COURT: The cost share.
- 19 MR. RUBINSTEIN: Share. So they are suggesting that
- 20 because there's nothing in here that she couldn't consider it.
- 21 She never considered this document, Judge. She never
- 22 considered it.
- 23 MR. KWOK: I never suggested that. I just asked her
- 24 what the document says.
- 25 THE COURT: She --

	866zkar4	Riley - recross
1		MR. RUBINSTEIN: What was the purpose of it?
2		THE COURT: To show there was no dispute.
3		MR. RUBINSTEIN: Pardon?
4		THE COURT: To show there was no dispute about that
5	item.	
6		MR. RUBINSTEIN: But she considered it.
7		MR. KWOK: Who said she considered
8		THE COURT: No one said she considered it.
9		(Continued on next page)
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866zkar4 Riley - recross

- 1 (In open court)
- 2 MR. RUBINSTEIN: Can I ask the Court Reporter if that
- 3 was answered, that question about the meals was asked answered?
- 4 THE COURT: No.
- 5 MR. RUBINSTEIN: Could I ask it again?
- 6 THE COURT: You can ask another question, not that
- 7 one.
- 8 MR. RUBINSTEIN: You said at the sidebar I could ask
- 9 it.
- 10 THE COURT: What?
- 11 MR. RUBINSTEIN: You said at the sidebar, I could ask
- 12 it.
- 13 THE COURT: I didn't say that.
- 14 BY MR. RUBINSTEIN:
- 15 Q. In the exhibits, government Exhibit 114 --
- 16 THE COURT: Go ahead.
- 17 Q. The government asked you questions about 114, correct?
- 18 THE COURT: Yes.
- 19 Q. By your --
- 20 THE COURT: If it's within the scope of the redirect.
- 21 We're not going to go over all of 114 and start all over again.
- 22 MR. RUBINSTEIN: I don't intend to, Judge.
- 23 Q. By your red portion of the circles, Dr. Karron owes three
- 24 times the amount of money that he received, right; is that
- 25 correct?

866zkar4 Riley - recross

- 1 MR. KWOK: Objection.
- 2 THE COURT: I don't understand the question. You want
- 3 to point to something in Exhibit 114 or 115, you can, but the
- 4 questions you're asking call for computations.
- 5 Q. How much, according to these red circles on Exhibit 114 and
- 6 115, how much does Dr. Karron, according to you, owe NIST ATP?
- 7 A. According to the red circles? It would be 268,000 plus --
- 8 Q. Pardon?
- 9 A. -- 196.
- 10 Q. What?
- 11 A. 268,000 plus 196,000 is how much CASI would owe back.
- MR. RUBINSTEIN: I'm sorry, Judge.
- 13 Q. Did you say 196?
- 14 THE COURT: Talking about what CASI owes or what Dr.
- 15 Karron owes?
- 16 THE WITNESS: CASI, right. Dr. Karron would be --
- 17 what CASI owes.
- 18 Q. And what does Dr. Karron owe?
- 19 THE COURT: What's the rest of your question? You're
- 20 asking what Dr. Karron owes, according to Exhibit 114?
- MR. RUBINSTEIN: 115.
- 22 THE COURT: 115?
- MR. RUBINSTEIN: Either one.
- 24 THE COURT: Which one?
- 25 MR. RUBINSTEIN: They're related. I can't tell.

SOUTHERN DISTRICT REPORTERS, P.C.

866zkar4 Riley - recross

- 1 Q. I want to know between these two exhibits, if we could find
- out how much she claims Dr. Karron has in unallowable expenses?
- 3 A. This shows the CASI unallowable expenses.
- 4 THE COURT: Just Dr. Karron, just Dr. Karron, that's
- 5 all you were asked. You're looking at Exhibit 114.
- 6 MR. RUBINSTEIN: I have no further questions, your
- 7 Honor.
- 8 MR. KWOK: Two questions, your Honor, two questions.
- 9 THE COURT: How are you going to be in the scope? All
- 10 right.
- MR. KWOK: Within the scope.
- 12 THE COURT: It's got to be within the scope.
- 13 REDIRECT EXAMINATION
- 14 BY MR. KWOK:
- 15 Q. Can you pull up government Exhibit 110B, page seven?
- 16 THE COURT: Wait a minute. Where are we going now?
- 17 It's a different exhibit. That's not within the scope. It's
- 18 not allowed.
- 19 MR. KWOK: Final question.
- 20 Q. Ms. Riley, in your review of all the checks, who signed all
- 21 those checks for CASI?
- 22 MR. RUBINSTEIN: Objection, your Honor, beyond the
- 23 scope.
- 24 THE COURT: Objection sustained.
- 25 All right. You're excused. Next witness.

SOUTHERN DISTRICT REPORTERS, P.C.

866zkar4 Riley - redirect

1 MR. EVERDELL: Your Honor, the government calls Frank

- 2 Spring.
- 3 FRANK SPRING,
- 4 called as a witness by the government,
- 5 having been duly sworn, testified as follows:
- 6 DIRECT EXAMINATION
- 7 BY MR. EVERDELL:
- 8 THE COURT: Please, go ahead.
- 9 Q. Good afternoon, Mr. Spring.
- 10 A. Hello.
- 11 Q. What do you do for a living?
- 12 A. I serve as a consultant working on bookkeeping and other
- 13 financial activities for a number of clients.
- Q. What do you mean by bookkeeping?
- 15 A. Well, these are -- generally, I work with small businesses
- 16 and they have various bookkeeping needs, keeping track of their
- income and expenses.
- 18 Q. How long have you been doing that kind of a work?
- 19 A. For, as a freelance consultant, eight years.
- 20 Q. And do you work alone or do you work for a company?
- 21 A. I am subcontracted by a gentleman called Ken Jackson, who
- 22 owns a company called the Jackson Group, which specializes in
- 23 services like this.
- 24 Q. And how long have you been working as a subcontractor for
- 25 Jackson Group?

866zkar4 Spring - direct

- 1 A. Since the year 2000.
- Q. What sorts of clients do you have in doing your work?
- 3 A. Most of the clients I work for currently are small
- 4 businesses, which is to say they might be grossing about a
- 5 million, a million-and-a-half dollars a year. We also work for
- 6 individuals.
- 7 Q. And do companies that you deal with as clients typically
- 8 come to you at any particular point in the life of their
- 9 company?
- 10 A. Yes. Frequently the companies that come to us, and the
- 11 individuals, might be using the computer systems or software
- 12 systems that we specialize in, and they find that things are
- 13 going wrong, they don't understand how to use the system, or
- 14 their in-house bookkeeper has not been doing the job to the
- 15 company's satisfaction.
- 16 Q. And what are those systems that you're referring to?
- 17 A. There are two that we specialize in, both made by the same
- 18 company; intuit, and you might be familiar with the names
- 19 Quicken is one of them which is advertised widely in this
- 20 country, it's kind of a brand name. That's used mostly for
- 21 following your personal finances, for tracking them. And then
- the other system is called Quick Books, and that's generally
- used for small businesses.
- 24 Q. Mr. Spring, do you have any formal training in accounting?
- 25 A. Well, what we do is not accounting. What we do is SOUTHERN DISTRICT REPORTERS, P.C.

866zkar4 Spring - direct

- 1 bookkeeping, which is substantially different. In fact, part
- of the job of a good bookkeeper is in fact to prepare financial
- data come tax time, so that the accountant, who is the person
- 4 actually doing the tax report, can do it in the most accurate
- 5 way possible.
- 6 Q. What training did you receive in bookkeeping?
- 7 A. Mostly -- well, there are two aspects to that. Since 1980,
- 8 I am a small business, small company owner myself. And
- 9 starting in 1980 I've set up four companies, I've owned four
- 10 companies over the years. And as part of that business, either
- 11 as full owner or co-owner of those companies, I was responsible
- 12 for the financial dealings of the company, the day-to-day
- 13 bookkeeping, the financial planning, the budgeting, et cetera.
- 14 And then when I started acting, doing consultancy
- 15 services for Mr. Jackson, I was trained extensively by him.
- 16 Q. How long did you do the, your companies for?
- 17 A. Oh, we set up -- my partner and I set up our first company
- 18 in 1980.
- 19 Q. Mr. Spring, did there come a time when you met someone
- 20 named Dr. Karron, Dr. Daniel Karron?
- 21 A. Yes.
- 22 Q. Do you see Dr. Karron here in the courtroom today?
- 23 A. I do.
- 24 Q. Would you please point him out and identify an article of
- 25 clothing he's wearing?

866zkar4 Spring - direct

- 1 A. It's the gentleman over there wearing a light colored tie
- and a flag pin, if my eyes are holding up.
- 3 MR. EVERDELL: May the record reflect the witness has
- 4 identified the defendant?
- 5 THE COURT: Yes, the witness has identified the
- 6 defendant.
- 7 Q. Mr. Spring, how did you first meet the defendant?
- 8 A. I was introduced to him by Mr. Jackson.
- 9 Q. And what was the occasion for that meeting?
- 10 A. The first meeting, I was asked to come and meet with Dr.
- 11 Karron, as there were some bookkeeping needs he need attending
- to for the project he was working on at the time.
- 13 Q. Do you know what project that was?
- 14 A. It was the ATP.
- THE COURT: Could we have date?
- 16 Q. Do you recall the date of that meeting, roughly?
- 17 A. I began working on the ATP project in July, late July of
- 18 2002. And if memory serves correct, it would have been shortly
- 19 before then, because his needs were immediate.
- 20 Q. Was this the first time that the defendant had sought out
- the services of the Jackson Group?
- 22 A. No.
- 23 Q. Can you explain?
- 24 A. Ken Jackson and the Jackson Group had worked previously
- with CASI on a project called DARPA, and that would have been,

866zkar4 Spring - direct

- 1 I believe that was about two or three years before the ATP
- 2 project.
- 3 O. Can you say again when you were hired by CASI?
- 4 A. July of 2002.
- 5 Q. And how long did you work for CASI?
- 6 A. Up through October of 2003, about 15 months.
- 7 Q. Were you paid for your work?
- 8 A. I was.
- 9 Q. What were you asked to do, generally, when you were hired
- 10 by CASI?
- 11 A. Well, when I was hired by CASI, there was already an
- 12 in-house bookkeeper working on the ATP project, so I wasn't
- initially involved in the day-to-day activities, normal
- 14 activities of a bookkeeper, you know, inputting invoices,
- 15 writing checks, paying staff, et cetera. But there was a --
- one of the requirements, one of the requirements of the ATP
- 17 project was that there was an audit at the end of the first
- 18 year. This was simply a requirement of the project. And I
- 19 started working for CASI about ten months into that first year,
- 20 so the audit was coming up and I was asked to come in and
- assist on preparing the books for the audit.
- 22 O. And who is conducting that audit?
- 23 A. That would've been Joan Hayes.
- Q. Now, when you were hired to participate in the audit, what
- 25 was the first thing your -- oh, withdrawn.

866zkar4

Spring - direct

- 1 When you were hired, did you learn who had been
- 2 responsible for keeping the books before you arrived?
- 3 MR. RUBINSTEIN: Objection, your Honor.
- 4 THE COURT: There was someone working there. Did you
- 5 meet the person working there?
- 6 THE WITNESS: No, your Honor. There was -- well,
- 7 there was a young woman, Niki Winters who had been working on
- 8 the project books before I entered the scene, and continued to
- 9 work on the books for I believe another three or four months,
- 10 after I started at the end of July of 2002. Previous to that,
- 11 I believe --
- 12 MR. RUBINSTEIN: I object.
- 13 THE COURT: Objection sustained.
- 14 Q. Did you have any conversations with the defendant about who
- kept the books prior to you being there?
- 16 A. Yes, I did.
- 17 O. And what was the nature of those conversations?
- 18 A. Well, I asked who had been doing them, and the books were
- 19 in two separate systems, and so I inquired as to how those were
- 20 done. And I was told by the defendant that he had been
- 21 responsible for some of it, and that there had been other
- 22 bookkeepers in the past.
- 23 Q. What were those two systems that you referred to that the
- 24 company used?
- 25 A. Well, the same company, Intuit, makes these two systems SOUTHERN DISTRICT REPORTERS, P.C.

866zkar4

Spring - direct

- 1 which I mentioned a few minutes ago. One is this thing called
- 2 Quick Books, which is good for small businesses, and then the
- 3 other one is called Quicken, which you see advertised maybe a
- 4 lot on television and that kind of thing. That is more
- 5 suitable for households and personal stuff.
- 6 THE COURT: What ones were they using; what system,
- 7 what were these two systems?
- 8 THE WITNESS: The CASI and ATP affairs were being run
- 9 out of Quick Books, and then Quicken was being used to track
- 10 the defendant's personal finances.
- 11 Q. And did you have any discussions with the defendant about
- the particular systems that he was using?
- 13 A. To the extent that I had to become familiar with the way
- 14 the information had been inputted up to my coming into work on
- 15 these systems, and we started by looking at the personal side
- of things, which was held within the Ouicken software.
- 17 Q. And what were you asked to do with respect to the personal
- 18 side of things in the Quicken software when you arrived?
- 19 A. I was asked by the defendant to go into those systems, and
- 20 on the very first day that I was there he sat me down in front
- 21 of Quicken, in front of the computer and he navigated me
- 22 through the Quicken books, the personal finances, and asked me
- 23 to extract certain kinds of expenses from that, that I was told
- would be charged back to the ATP project.
- Q. And do you recall what sorts of expenses those were?

 SOUTHERN DISTRICT REPORTERS, P.C.

- 1 A. Well, there are a number of kinds of categories. There
- were things in the order of medical expenses, equipment, local
- 3 travel, meals, et cetera, smaller items like that.
- 4 Q. And who told you that these would be ATP allowable expenses
- 5 when you were asked to do this?
- 6 A. I was told by the defendant.
- 7 Q. And do you recall when these expenses were incurred?
- 8 A. I was asked by the defendant to go back to April of 2002 to
- 9 extract some of these expenses.
- 10 Q. Are you certain about the date April 2002?
- 11 A. I am. I -- the project started -- I beg your pardon. I am
- 12 getting my years wrong. I began in September of 2002. The
- 13 project had been going on for ten months. It was 2001,
- 14 April 2001.
- 15 Q. So were the charges -- just to be clear, you were asked to
- go back to April 2001 to look at the charges?
- 17 A. Right, right. The project itself started in October of
- 18 2001. So, basically, I was being asked to go back
- 19 four-and-a-half, five months before the start of the project to
- 20 extract expenses.
- 21 O. And did you have any discussions with the defendant about
- 22 extracting those expenses prior to the start of the grant?
- 23 A. Well, to the extent that it seemed unusual to me. At this
- 24 point I was -- this is really literally my first week or so.
- 25 THE COURT: Did you have any discussions with the SOUTHERN DISTRICT REPORTERS, P.C.

866zkar4

Spring - direct

- 1 defendant is what you were asked, not what was going on in your
- 2 mind.
- 3 A. Well --
- 4 THE COURT: Did you have discussions with him about
- 5 it, yes or no?
- 6 THE WITNESS: No. I did what I was told, basically.
- 7 I had no reason to think that if I was asked to go back to
- 8 April --
- 9 THE COURT: No was the answer. Let's go ahead.
- 10 A. No.
- 11 Q. After extracting the data from the personal system, what
- 12 did you do with that data?
- 13 A. Well, the data was extracted by, basically, two methods.
- 14 One would generate reports using the software, which would
- 15 detail what these expenses were, and then those would be
- transferred via one method or another into Ouick Books, which
- 17 was tracking the ATP expense, as well as the CASI expenses.
- 18 Q. And when all the data was in the corporate Quick Books
- 19 system, what, if anything, did you do to the Quick Books
- 20 system?
- 21 A. The Quick Book system, I then began to generate what we
- 22 would call income and expense statements or profit and loss
- 23 statements that showed the activity for the previous 10 or 11
- 24 months at that point.
- Q. And what, if anything, did you do with the expenditures SOUTHERN DISTRICT REPORTERS, P.C.

- 1 that were reflected in the Quick Book system?
- 2 A. There were number of groups of expenses. This would've
- 3 been -- I would have been working several weeks now on the
- 4 project and I began to -- I had begun to understand what we
- 5 were, you know, allowable ATP expenses from expenses that were
- 6 not allowed by the project. And my basic job was to separate
- 7 out the two, those things we could allow for the project to pay
- 8 for, and those things we could not.
- 9 Q. And how did you become familiar with what was allowable and
- 10 what was not allowable?
- 11 A. I read the regulations.
- 12 THE COURT: You say you red the regulation?
- 13 THE WITNESS: Yes, sir.
- 14 THE COURT: What did you look at?
- 15 THE WITNESS: If memory serves correct, it was about a
- 16 30 page document produced by ATP which said, basically, these
- are the dos and don't, what was allowable expense and what
- 18 wasn't.
- 19 Q. Did you have any other help in deciding what was allowable
- and what was not allowable?
- 21 A. Well, this is several weeks after I had started, maybe
- 22 again four or five weeks. And at that point Joan Hayes and, I
- 23 because the audit was imminent and she was asking to have data
- 24 presented to her, so she had began begun to point out to me
- 25 certain things that were not, by her definition, allowable.

866zkar4 Spring - direct

1 But by this point I had also read the document. And Joan Hayes

- 2 and I also reviewed the document to make sure that we both
- 3 understood what was an allowable expense and what wasn't.
- 4 Q. And by document, you're referring to the document?
- 5 A. The regulation, yes.
- 6 Q. Did you have any discussions with the defendant about
- 7 whether certain expense would be classified as ATP related
- 8 expenses versus non ATP related expenses?
- 9 A. I did question a number of things as my familiarity with --
- 10 THE COURT: You're asked --
- 11 THE WITNESS: Yes.
- 12 THE COURT: You were asked whether you had a
- 13 conversation with the defendant.
- 14 THE WITNESS: Yes.
- 15 THE COURT: It calls for yes or no answer.
- 16 THE WITNESS: Yes.
- 17 Q. What was the nature of those discussion you had with the
- 18 defendant?
- 19 A. Well, I, as I became more familiar with what was an
- 20 allowable expense and what wasn't, I began to question why
- 21 certain expense categories were being classed one way or the
- 22 other; generally, why they were being classed as an allowable
- expense.
- 24 Q. And what sorts of expenses did you question with the
- 25 defendant?

866zkar4

Spring - direct

- 1 A. Oh, a range of things; rent, utilities, certain amounts on
- 2 capital expenditures, business, you know, medical expenses.
- 3 O. And what -- withdrawn. What, if anything, did Dr. Karron
- 4 do if he disagreed with your classification of whether they
- 5 were ATP or non ATP related expenses?
- 6 A. Well, he would point out to me that I either didn't know my
- 7 job, I didn't understand what an ATP allowable expense was or
- 8 wasn't, or that he was in conversation with the ATP managers in
- 9 Washington to ensure that these expenses, which I understood to
- 10 be not allowed by the project, would be allowed into the
- 11 project as an expense.
- 12 Q. Did you see anything in particular reflected in the books
- 13 regarding these conversations you had with the defendant?
- 14 A. Well, as the kind of person in charge of keeping the Quick
- 15 Books file correct, I took it upon myself to take what was an
- 16 allowable expense and put it into that category, and if it was
- 17 not allowed into ATP, to put it into the general CASI expenses.
- 18 Q. And what, if anything, would the defendant do after you did
- 19 that?
- 20 A. Normally I would go away -- I didn't work at the office
- 21 every day, it would be up to three days a week on afternoon.
- 22 And I would do my work in the office, go away, probably for a
- 23 couple of days, come back for my next session and find out that
- 24 the expenses that I had taken out of ATP, turned them back into
- 25 a CASI only expense, had been turned -- had been reinputted as SOUTHERN DISTRICT REPORTERS, P.C.

- 1 an ATP allowable expense.
- 2 Q. And did you have any discussions with the defendant about
- 3 who had done that?
- 4 A. I did.
- 5 Q. And what were these discussions?
- 6 A. He told me he had done it.
- 7 Q. And did he tell you why he had done it?
- 8 A. Yes. Rather like I, what I said a few minutes ago, I
- 9 didn't, either didn't know what I was doing, or the ATP
- 10 managers would allow these expenses or I didn't, I didn't
- 11 understand the ATP regulations.
- 12 THE COURT: That he wouldn't allow it or hadn't
- 13 allowed it, the ATP manager?
- 14 THE WITNESS: No, your Honor that I had taken, that I
- 15 had taken out something out of the ATP and put it into a
- 16 general CASI expense, and that he would then take that and put
- 17 it back into ATP.
- 18 THE COURT: I got that part. I'm talking about the
- 19 conversation afterwards. Did he say that they were -- had been
- 20 approved by --
- 21 THE WITNESS: He said they were in the process of
- 22 being approved, and that he would be having meetings with the
- 23 ATP managers to clear up all of these matters that I was
- 24 questioning.
- Q. About how many times did you notice changes like this SOUTHERN DISTRICT REPORTERS, P.C.

- 1 occurring in the books?
- 2 A. I never did an exact count, but I would say somewhere
- 3 between one dozen and two dozen times.
- 4 Q. Do you remember any particular incident, conversation with
- 5 the defendant about this issue?
- 6 A. Oh, yes, things would get very heated. Because it was like
- 7 a tennis game. I would do what I -- would follow the
- 8 regulations, take it out of ATP, come back a few days later, it
- 9 was back in ATP. I go away again, bang, bang, bang like this.
- 10 And after a couple of months of this happening, it reached a
- 11 kind of a fever pitch where I actually walked out of the
- 12 client's apartment which in what is now close to 40 years of
- 13 being in business and providing professional services --
- 14 MR. RUBINSTEIN: I move to strike that portion, your
- 15 Honor.
- 16 THE COURT: Objection sustained. You can't go into
- 17 how long you've been in business.
- 18 THE WITNESS: Okay.
- 19 THE COURT: The jury will disregard that part of it.
- 20 Q. You said you walked out, Mr. Spring?
- 21 A. Yes.
- Q. Did you ever return to CASI?
- 23 A. I did.
- Q. Why did you return?
- 25 A. Well, I provided service to client, and I've always taken SOUTHERN DISTRICT REPORTERS, P.C.

- 1 my clients as they are the people that come first. And as part
- of my job to help them in, to do my job, the job I was asked to
- 3 do. The reason I had walked out is that I was being asked to
- 4 do a job and then being prevented from doing it at the same
- 5 time.
- 6 Q. All right. I'd like you to take a look at what's in front
- of you Government's exhibits 144, what's been marked for
- 8 identification, not yet in evidence as Government's exhibit
- 9 144, 145, and 149. Can you pull those out, please. You can
- 10 take a look at each of those in succession, please?
- 11 THE COURT: Bear with us. You can't look at the
- 12 documents yet, all right. They're not admitted in evidence.
- Q. Do you see those documents, Mr. Spring?
- 14 A. I do.
- 15 Q. Do you recognize those documents?
- 16 A. I do.
- 17 Q. What are they?
- 18 A. These are a series of e-mail chains from or to -- either
- 19 from or to myself to the defendant.
- 20 Q. And how do you recognize them?
- 21 A. My name is on them.
- 22 Q. And can you give a basic date range for these e-mail
- 23 strings?
- 24 A. November through, say, early December of 2002.
- MR. EVERDELL: Your Honor, the government offers

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- 1 Government's exhibit 144, 145 and 149.
- 2 MR. RUBINSTEIN: No objection, your Honor.
- 3 THE COURT: All right 144, 145 and 149 are admitted in
- 4 evidence.
- 5 (Government's Exhibits 144, 145 and 149 received in
- 6 evidence)
- 7 Q. Let's first take a look at government's 144.
- THE COURT: Do we have a date? I see.
- 9 Q. Since these are e-mail strings, we're actually going to go
- 10 backwards to forward, the early ones what begin in the back.
- 11 So if you could turn, please, to page three of Government's
- 12 144?
- 13 A. Uh-huh.
- 14 Q. You see that e-mail, page 3, 144?
- 15 A. Yes, yes. Sorry.
- 16 Q. And do you see the date of that e-mail?
- 17 A. Yes.
- 18 Q. What's that?
- 19 A. November 29th, 2002.
- Q. And who sent the e-mail and who is it to?
- 21 A. It is from the defendant to myself.
- 22 Q. All right. If you could look and just read the first few
- 23 sentences up to, I put the pay-pal stuff?
- 24 A. This is from the defendant. I found a number of errors in
- 25 the program non-program splits. We need to fix this. I also SOUTHERN DISTRICT REPORTERS, P.C.

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1 have problems with the entire way you are splitting the costs

- between ATP and non-ATP. We need to fix this, as stuff is
- 3 falling in the cracks and there can be no cracks for items
- 4 missing.
- 5 Q. What did you understand the defendant to mean about ATP
- 6 versus non-ATP splits that he was discussing there?
- 7 A. It's a continuation of the work I had started doing, where
- 8 having become familiar with the regulations by this point in
- 9 the project.
- 10 MR. RUBINSTEIN: Objection, and I move to strike this,
- 11 your Honor. It's not responsive.
- 12 THE COURT: Let me hear the question.
- 13 Q. What was your understanding, Mr. Spring, as to what was
- 14 meant by the problems he was having with your splitting the
- 15 cost between ATP and non-ATP?
- 16 A. Well, he didn't agree with the way, with what I was saying
- 17 was ATP allowable and what wasn't. As simple as that.
- 18 Q. All right. If you could move now to page two, which is the
- 19 page before that.
- 20 THE COURT: It's the page after, but it's the day
- 21 before, the message after that. All right.
- 22 MR. EVERDELL: The message after that, even though
- it's the page before.
- Q. If you could look at the e-mail at the bottom of that page.
- 25 A. Uh-huh.

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- 1 Q. And it is one from yourself to Dr. Karron, is that correct?
- 2 A. It is.
- 3 O. And is that your response to that previous e-mail we just
- 4 read?
- 5 A. It is.
- 6 Q. Could you read the last two paragraphs of your response,
- 7 second two paragraphs of your response?
- 8 A. I rather doubt your conclusion about the number of errors
- 9 in my division of ATP and non-ATP costs. I have tried to
- 10 squeeze everything that is chargeable, and then some, into ATP.
- 11 Example: I tried to get through payments you made to Jill
- 12 Feldman at the beginning of 2002, and Pennie & Edmonds.
- 13 However, Joan's eagle eye caught these and is unlikely to allow
- 14 them to get through, particularly the legal fees which go back
- 15 to patent issues related to 1998-1999. Joan made extensive
- 16 notes yesterday relating to these and many other things she
- 17 wants to take a closer look at so some of what you want to do
- 18 she should be involved in. Otherwise, there is nothing but
- 19 more time, and money, expended putting items in, then taking
- them out, then putting them in, ad nauseam.
- 21 O. All right. Let's take a look at individual things in
- 22 there. You say -- first, do you recall who Jill Feldman is?
- 23 A. Yes. She is an accountant that CASI had used previously.
- Q. And do you recall Pennie & Edmonds, what that was?
- 25 A. Yes, they, they are a law firm who were working on patent,
 SOUTHERN DISTRICT REPORTERS, P.C.

- 1 these patent issues I referred to later in the paragraph.
- 2 Q. You mentioned that you were trying to squeeze everything
- 3 that is chargeable into ATP; what did you mean by that?
- 4 A. Right. We -- well, I was willing to give the defendant the
- 5 benefit of the doubt with his continually telling me he was
- 6 going to get these charges approved by the ATP managers, so I
- 7 would leave things in in the hopes that they would get
- 8 approved.
- 9 Q. You see in the second paragraph that you read, your comment
- 10 that there's nothing but more time money expended putting items
- in and taking them out, putting them in ad nauseum; you see
- 12 that?
- 13 A. Yes.
- 14 Q. What did you mean by that?
- 15 A. Well, as I alluded to previously --
- 16 THE COURT: It's what you're referring to previously,
- 17 is that right?
- 18 THE WITNESS: That's right, your Honor.
- 19 THE COURT: All right, next question.
- 20 Q. All right. If you could turn to the previous page, which
- is actually the next e-mail response to your e-mail, from the
- 22 defendant. If we could blowup that e-mail. If you would look,
- 23 please, at the second grouping there, that looks like a
- 24 paragraph?
- THE COURT: What date are we talking about?

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- 1 Q. What's the date of that e-mail, Mr. Spring?
- 2 A. November 30th, 2002.
- 3 Q. Is that the day after the -- well, is that the same day as
- 4 the e-mail that we just read?
- 5 A. It is the same day. The previous e-mail was written at
- 6 9:00 o'clock in the morning on Saturday. This e-mail you're
- 7 referring is now was written at a little after 2:00 p.m. on
- 8 that same day.
- 9 Q. Would you please read that second paragraph, the
- 10 defendant's response?
- 11 A. Right. This is from the defendant. You and she need to
- 12 keep grinding away on disallowed items. Power, Jill Feldman,
- 13 Solomon and Bernstein, Peter Berger, et cetera, et cetera, et
- 14 cetera, are all actually and partly allowable. Rent, some
- 15 cable, some telephone are not yet allowed. I may get an
- 16 allowance on rental of the living room to the project, as it is
- 17 clearly completely taken over by the project.
- 18 Q. Say again what's the date of that e-mail was?
- 19 A. November 30th, 2002.
- 20 Q. So about how long after the start day of the grant was that
- 21 e-mail sent by the defendant?
- 22 A. The grant started in October -- on October 1st, 2001, so by
- 23 this date, end of November of 2002, we are into the second
- 24 month of the, of fiscal year two, 14 months after the start of
- 25 the project.

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1 Q. To your knowledge, did the defendant ever get an allowance

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- for rent and utilities, things like that, from the people at
- 3 ATP?
- 4 A. No.
- 5 Q. All right. Now if you would look at Government's 145 and
- 6 149. Starting with 145. Without putting it on the board, if I
- 7 just take a look at. Are these e-mails, 145 and 149, part of
- 8 the same e-mail chain, or are they a brand new e-mail chain?
- 9 A. These are actually part of the same chain. They're dated
- the day before, November 29th, 2002.
- 11 Q. Let's look at Government's 145, page two. I'm sorry, if we
- 12 could look at page three, first.
- Just identify this to orient ourselves, that e-mail
- 14 that you sent to Dr. Karron, is that the one we read before,
- about squeezing the charges into the ATP?
- 16 A. It is, on November the 30th.
- 17 (Continued on next page)

18

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- 1 BY MR. EVERDELL:
- Q. Now, if we could go to page 2, which is a later e-mail, the
- 3 previous page, and you see your response to Dr. Karron on the
- 4 bottom of the page there?
- 5 A. I do.
- 6 Q. If you could read, please, the second two paragraphs
- 7 starting with "hopefully".
- 8 A. "Hopefully, you will return from Washington with a clearer
- 9 idea of what they are going to allow and not allow as
- 10 chargeable items. This remains the biggest hang-up, with you
- 11 wanting to include everything (including the kitchen sink) and
- Joan resisting you at every move, as she is doing her job to
- 13 the letter of the law, which I fully agree with.
- 14 "Saying that CASI can charge this and that item is all
- 15 very well, but Joan will want written confirmation of that from
- 16 the gals at NIST, and hopefully you will be able to get that
- 17 (or at least set the wheels in motion) when you are in D.C."
- 18 Q. Mr. Spring you referred to a trip to D.C. Who is going to
- 19 D.C.?
- 20 A. The defendant.
- 21 Q. And what do you mean when you say "hopefully you will
- 22 return from Washington with a clearer idea of what they are
- 23 going to allow"?
- 24 A. I am suggesting there that there was still the hope that he
- 25 would be able to get -- the defendant would be able to get

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- 1 these items which were by the letter of the law nonchargeable
- or nonallowable, he would somehow be able to get those into the
- 3 project.
- 4 Q. Was the defendant going to meet with people at NIST in
- 5 D.C.?
- 6 A. I believe so, with the project managers.
- 7 Q. What are you referring to when you are saying "they will
- 8 want written confirmation from the gals at NIST?
- 9 A. Well, it's very clear from the regulations and the
- 10 contract -- this was a government contract after all -- there
- 11 was nothing that one could just say, well, fine, somebody told
- 12 me this. It would have to be written because, you know, it was
- 13 going outside the standard regulations that I had reviewed.
- 14 Q. To your knowledge, did the defendant ever get written
- 15 approval from the people at NIST for these items?
- 16 A. To the best of my knowledge, no.
- 17 Q. If you could now look at Government's 149, and going to
- 18 page 2. First just to orient ourselves, do you see the e-mail
- in the middle of the page from you to Dr. Karron?
- 20 A. I do.
- Q. Is that the e-mail we just read from?
- 22 A. Yes.
- 23 Q. Now, could you look at Dr. Karron's response at the top of
- 24 the page.
- 25 A. OK.

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- 1 Q. What's the first line of that response?
- 2 A. "I understand."
- 3 O. All right. Mr. Spring, you mentioned rent payments, rent
- 4 charges you had noticed in the books. Is that right?
- 5 A. That's correct.
- 6 Q. Did you have any discussions with the defendant about rent
- 7 charges, in particular rent payments?
- 8 A. Well, I did. Especially -- I did. I did. Yes.
- 9 Q. And what was the nature of those discussions that you had
- 10 with the defendant?
- 11 A. That, you know, we had not received any written
- 12 confirmation or any other confirmation that these would be
- 13 allowable expenses, so they have to come out of an allowable
- 14 expense; and given that it was rent on the apartment, these
- 15 were things that would happen every single month, so the
- 16 conversation came up a lot, until finally it reached a climax
- in one of our more heated debates, where the defendant told me
- 18 he would tell them, by which I think he meant the ATP managers
- 19 --
- MR. RUBINSTEIN: Objection, your Honor.
- 21 THE COURT: Just give the statements, don't say what
- 22 you believed.
- 23 A. All right. The defendant told me he would tell the ATP
- 24 managers that he lived in Connecticut.
- Q. Did the defendant in fact live in Connecticut, to your SOUTHERN DISTRICT REPORTERS, P.C.

- 1 knowledge?
- 2 A. Absolutely not.
- 3 MR. RUBINSTEIN: Objection. I move to strike that.
- 4 THE COURT: Well, the jury is not to -- the jury is to
- 5 disregard the conclusion of the witness that the defendant did
- 6 not live in Connecticut. It's hearsay. It would be based on
- 7 hearsay information.
- 8 Q. All right. Mr. Spring, besides the issue with the rent
- 9 that you just discussed, did you have any discussions with the
- 10 defendant about other expenses?
- 11 A. Yes, medical expenses for example; the cleaner, things
- 12 related to the rent, utilities, capital improvements on the
- 13 apartment, which was using ATP money.
- 14 Q. Let's start with medical expenses. What, if anything, did
- 15 you discuss with the defendant about medical expenses?
- 16 A. Well, a lot of the medical expenses went back to five
- months before the start of the project, that he was getting ATP
- 18 to pay for. That was a big issue as I learned about the
- 19 regulations for the ATP project, you know, several weeks into
- 20 starting --
- 21 MR. RUBINSTEIN: I'm going to object to this. He has
- 22 not been qualified as an expert on the ATP regulations. It's
- 23 self serving.
- 24 THE COURT: The jury is instructed he is not an expert
- 25 on the ATP regulations; however, he may state what his

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- 1 understanding of those regulations was at the time.
- 2 A. May I continue?
- 3 Q. Yes, please.
- 4 A. My understanding of the ATP regulations was such that there
- 5 would be no employee benefits allowed to be paid for by ATP
- 6 such as medical expenses, if the recipient's company -- CASI in
- 7 this case -- did not have a formal employee benefits plan,
- 8 which CASI did not have.
- 9 Q. What sort of expenses did you talk to the defendant about?
- 10 A. On the medical expense side there was a large amount of
- 11 expenses to doctors, and one that got my immediate attention
- 12 was for electrolysis.
- 13 Q. How did you know it was for electrolysis?
- 14 A. The defendant when he was doing his own data entry had
- 15 noted these things as zapping.
- 16 Q. What is electrolysis?
- 17 A. That's when you have all of or some hair removed from your
- 18 body. Hair removal.
- 19 THE COURT: All these expenses were within the grant
- 20 period?
- 21 THE WITNESS: No, your Honor. A number of them
- 22 predated the start of the grant by four or five months.
- 23 Q. And what if anything did the defendant say to you when you
- 24 discussed these expenses with him?
- 25 A. I would get the usual refrain, which I already cited twice, SOUTHERN DISTRICT REPORTERS, P.C.

- which is that I didn't know what I was doing, I didn't
- 2 understand the ATP regulations, or that he was seeking approval
- 3 of these things after the fact from the ATP managers.
- 4 Q. All right. I want you to look at Government Exhibit 143,
- 5 which is not in evidence yet. Do you see that document?
- 6 A. I do.
- 7 Q. Do you recognize that document?
- 8 A. I do.
- 9 O. What is it?
- 10 A. It's another chain of e-mails from the same time period.
- 11 Q. Between who and who?
- 12 A. Between myself and the defendant and -- yes, between myself
- 13 and the defendant.
- 14 MR. EVERDELL: Your Honor, the government offers
- 15 Government Exhibit 143.
- 16 THE COURT: 143 is admitted in evidence.
- 17 (Government's Exhibit 143 received in evidence)
- 18 Q. All right. Mr. Spring, if you could please look at the
- 19 last two pages of that exhibit -- the last three pages of that
- 20 exhibit. Without reading directly from the exhibit, could you
- 21 summarize the discussion going on between yourself and the
- 22 defendant.
- 23 MR. RUBINSTEIN: Do we have a page that he is on, your
- 24 Honor?
- 25 THE COURT: Start at the back and start reading

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- 1 forward.
- 2 Q. The last three pages, if you could just summarize a bit
- 3 what you are discussing there, without having to read through
- 4 the whole e-mail.
- 5 A. OK, right. This actually really breaks into two parts.
- 6 One is still addressing some of the issues we have been talking
- 7 about here today regarding what was ATP allowable and not, as
- 8 well as the other area I was working on which were budget for
- 9 the upcoming fiscal year.
- 10 Q. If we could now display page 2 of that exhibit, and if you
- 11 could look at the fourth paragraph there. First of all, who
- 12 sent that e-mail to who?
- 13 A. This is from the defendant to myself.
- 14 THE COURT: This is the next to last page of the
- 15 exhibit?
- 16 MR. EVERDELL: Sorry. This is page 2 of the exhibit.
- 17 And we are at the fourth paragraph from the top.
- 18 THE COURT: All right.
- 19 O. So, this is an e-mail from the defendant to yourself?
- 20 A. That's correct.
- 21 Q. Will you please read that paragraph, the fourth paragraph.
- 22 A. "What cost items did I submit that Joan is disallowing?
- 23 Any health or fringe cost items? I can overrule/allow those
- 24 costs even though CASI does not have a formal written benefits
- 25 plan based on the behavior of the company in the past and

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- 1 showing it is consistent through the project. Even if it is
- 2 not consistent through the project it is still my option do to
- 3 these things with an unwritten benefits plan."
- 4 There are some typos in there, I am afraid.
- 5 Q. Let's talk about the capital improvement equipment expenses
- 6 you mentioned before.
- 7 A. Yes.
- 8 Q. Did you have any discussions with the defendant about these
- 9 capital improvement equipment expenses that you had mentioned
- 10 before?
- 11 A. We are at this point literally two months into the fiscal
- 12 year two of the project, and it was my estimation that the cash
- 13 flow was going to be adversely affected because of the amount
- 14 of money that was being spent on the project. The funds that
- 15 were being tapped from ATP at that time weren't going to allow
- 16 the project to continue to function financially, and some of
- 17 this had to do with capital expenditure or equipment
- 18 expenditure.
- 19 Q. Why exactly did this have to do with capital expenditures
- or equipment expenditures?
- 21 A. The ATP project I believe for all three of the years that
- 22 the project would have run for, the recipient could access the
- 23 funds on a regular basis, and in the case of year two it was on
- 24 a monthly basis, and when I ran some projections it was obvious
- to me that we were tapping into too much money too soon, and

1 therefore we would run out of money before the end of fiscal

- 2 year two.
- 3 O. Did you have any conversations with the defendant about
- 4 that issue, about running out of money?
- 5 A. Well, when it began to affect things like payroll, I
- 6 certainly did.
- 7 Q. How did it affect payroll?
- 8 A. Well, we got -- at one point -- I don't remember the exact
- 9 date -- it was my estimation that payroll couldn't be met; and
- 10 as a business owner myself that seemed extraordinary.
- 11 MR. RUBINSTEIN: Objection, your Honor.
- 12 Q. All right, without adding those comments, did you have a
- 13 discussion with the defendant about this issue of cash flow?
- 14 A. I did.
- 15 Q. And what if anything did the defendant say to you about
- 16 this issue of cash flow?
- 17 A. In regards to payroll?
- 18 Q. In regards to payroll.
- 19 A. In regards to payroll he told me that people would get paid
- when they get paid.
- 21 Q. I would like you to look at Government Exhibit 142 which is
- 22 not yet in evidence.
- Do you see that document?
- 24 A. I do.
- Q. Do you recognize that document?

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- 1 A. I do.
- 2 O. And what is it?
- 3 A. This is an e-mail chain from mid-November of 2002.
- 4 Q. Between who and who?
- 5 A. It is between the defendant and myself and -- yes, no one
- 6 was copied on those e-mails -- just the defendant and myself.
- 7 MR. EVERDELL: Your Honor, the government offers
- 8 Exhibit 142.
- 9 MR. RUBINSTEIN: No objection, your Honor.
- 10 THE COURT: 142 is admitted into evidence.
- 11 (Government's Exhibit 142 received in evidence)
- 12 Q. Please turn to the last page of that exhibit, page 4. Is
- that an e-mail from yourself to Dr. Karron?
- 14 A. It is.
- 15 Q. Could you please look at where you have point five. Could
- 16 you read out point five?
- 17 A. "Transferring 40K would mean that in just over six weeks
- into year two of the project CASI has taken over 30 percent of
- 19 this year's funding. If you factored in (as if they were paid)
- 20 the additional \$110,000 plus due CASI vendors, this would mean
- 21 that CASI has actually used up closer to 50 percent of the
- 22 NIST-supplied funds. Just something to ponder ..."
- 23 Q. What did you mean by sending the defendant that e-mail?
- 24 A. Well, this is mid-November, fiscal year two, one and a half
- 25 months into the beginning of fiscal year two, and what I am

- 1 saying there is that we would have used up 50 percent of the
- 2 year's funding six weeks into it, six weeks into the project.
- 3 Q. Does this relate to the cash flow problem you mentioned
- 4 before?
- 5 A. Oh, absolutely.
- 6 Q. What if anything was the defendant's response after this?
- 7 A. Pretty much it was his company and he would do what he
- 8 wanted.
- 9 Q. All right. You mentioned cleaning expenses.
- 10 MR. RUBINSTEIN: Is he reading from an e-mail or
- 11 something?
- 12 THE COURT: No, he wasn't reading from an e-mail. He
- 13 just gave his answer.
- 14 Q. Let's talk about cleaning expenses which you mentioned
- 15 before. You had some discussions with the defendant about
- 16 cleaning expenses?
- 17 A. I did.
- 18 Q. What did you mean by cleaning expenses?
- 19 A. Well, there were weekly charges.
- 20 THE COURT: Let me go back. You mentioned 40,000.
- THE WITNESS: Yeah, 40K.
- 22 THE COURT: A transfer. What did that refer to? Do
- 23 you remember?
- 24 THE WITNESS: The \$40,000, the way one accessed the
- 25 ATP funds was that it was all done electronically. ATP did not SOUTHERN DISTRICT REPORTERS, P.C.

- 1 send CASI a check. We were able to -- Dr. Karron was able to
- 2 get online and access the ATP funds and shift them to the CASI
- 3 bank account. And that's what I meant by a transfer.
- 4 THE COURT: A draw-down.
- 5 THE WITNESS: Yes, that's correct.
- 6 Q. If we could talk about cleaning expenses you mentioned
- 7 before?
- 8 A. Right. Sorry. There were weekly or bimonthly cleaning
- 9 expenses written and paid for by ATP.
- 10 Q. And who were these cleaning expenses going to?
- 11 A. A lady called Margaret Ferrand.
- 12 Q. Who is Margaret Ferrand?
- 13 A. Somebody that I met. She was a person who was associated
- 14 with the defendant.
- 15 Q. Did you see Ms. Ferrand in the apartment?
- 16 A. I did.
- 17 Q. And what was she doing when you saw her in the apartment?
- 18 A. I wasn't there all the time, of course, but I did see her
- 19 cleaning on occasion, but I also saw her sleeping in the
- 20 apartment and just sort of hanging out.
- 21 Q. Did you ever see her doing any office work while you were
- in the apartment and saw her?
- 23 A. Later, some months after I began, she began to do scanning
- of receipts, invoices and so on.
- 25 Q. How long did she do that for as you observed?

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- 1 A. I believe a few weeks.
- Q. What happened after a few weeks?
- 3 A. She just disappeared.
- 4 THE COURT: How long was she there at the business
- 5 while you were there?
- 6 THE WITNESS: Well, your Honor, I remember meeting her
- 7 relatively soon after I started in July 2002, and I would think
- 8 by -- I don't remember the exact date, but to mid-summer, early
- 9 summer 2003. I wouldn't want to swear to that because I don't
- 10 remember the exact date.
- 11 Q. And were these cleaning expenses that you mentioned
- 12 expenses paid out to Ms. Ferrand?
- 13 A. They were.
- 14 Q. Did you have any discussions with the defendant about
- 15 paying Ms. Ferrand for cleaning?
- 16 A. Yes, as I didn't believe that these were ATP-allowable,
- 17 given that the apartment that she was cleaning was not an
- 18 allowable expense.
- 19 O. And what was the nature of those discussions?
- 20 A. Pretty much mind my own business.
- 21 Q. I would like you to look at Government Exhibit 147 not yet
- in evidence.
- 23 A. Could I get a glass of water, please, while we're doing
- 24 that?
- 25 Q. Certainly.

1 Mr. Spring, do you have that document in front of you,

- 2 147?
- 3 A. I do.
- 4 Q. Do you recognize that document?
- 5 A. I do.
- 6 Q. What is it?
- 7 A. An e-mail chain. The parties involved are the defendant,
- 8 myself and Mr. Bob Benedict, who was the year two project
- 9 business manager.
- 10 Q. And what is the date on that chain roughly?
- 11 A. June 21, 2003.
- 12 MR. EVERDELL: Your Honor, the government offers
- 13 Government Exhibit 147 in evidence.
- MR. RUBINSTEIN: No objection, your Honor.
- 15 THE COURT: No objection, 147 is admitted into
- 16 evidence.
- 17 (Government's Exhibit 147 received in evidence)
- 18 Q. If you could take a look at page 2 of that exhibit. Take a
- 19 look in particular at point 2. Sorry. This is an e-mail from
- who to who?
- 21 A. This is an e-mail from myself to the defendant and Bob
- 22 Benedict.
- 23 Q. Could we look at your point 2 there for a second.
- 24 A. Um-hum.
- 25 Q. Could you explain -- point 2 begins with "Ferrand".

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8667KAR5 Spring - direct

- 1 A. That's Margaret Ferrand, the cleaner and scanner person.
- Q. What are you saying in this point in your e-mail to the
- 3 defendant?
- 4 THE COURT: This is in 2003.
- 5 THE WITNESS: That's correct, your Honor.
- 6 A. OK. What we're saying here -- what I'm saying or
- 7 suggesting to Dr. Karron and Bob Benedict is that in
- 8 Ms. Ferrand's case on the scanning side of things, her office
- 9 work, I was certainly of the opinion that part of her time
- 10 could be spent -- you know, we can justify quite easily as an
- 11 ATP-allowable expense.
- 12 Q. And would you justify a full amount of her time as ATP
- 13 expense?
- 14 A. No, part time. I say there specifically on a regular
- 15 biweekly basis part of her time spent on scanning, because what
- 16 she was doing was scanning masses of material, and I had
- 17 occasion to witness some of the scanning, and noted at the time
- 18 that some of it was not related to the project.
- 19 Q. If you could look at the first page of the exhibit. And is
- 20 this Dr. Karron's response to you?
- 21 A. Yes.
- 22 Q. If you look down at the fifth paragraph.
- 23 A. Um-hum.
- Q. And what is Dr. Karron saying to you, if you could read
- 25 that out?

8667KAR5 Spring - direct

- 1 A. This is the paragraph beginning, "Please, you are not"?
- 2 Q. Yes.
- 3 A. Do you want me to read this aloud?
- 4 Q. Yes.
- 5 A. OK. This is from the defendant to myself -- and Bob
- 6 Benedict, the business manager, was copied -- to me. "Please,
- 7 you are not to make interpretations as to allowability or
- 8 category. You need to be a bookkeeper, not" -- indecipherable
- 9 -- "business owner. I know you like to think like an owner,
- 10 but I own this little dinghy, not you. Because of the
- 11 impression that you are "--
- 12 Q. You have read enough.
- 13 A. Sorry.
- 14 Q. "Mr. Spring, how often were you in the defendant's
- apartment when you were doing your work?
- 16 A. It would vary from week to week. On average two to three
- days a week, between four and six hours a day.
- 18 Q. And when you were in the apartment, how frequently did you
- 19 see the defendant in the apartment?
- 20 A. Often but not always.
- 21 Q. All right. Mr. Spring, what ultimately happened to the
- 22 grant?
- 23 A. At some point -- I don't remember the exact date -- the ATP
- 24 managers closed down the project or at least the funding for
- 25 the project.

8667KAR5 Spring - direct

- 1 Q. And when did you terminate your employment?
- 2 A. I stopped working there in October of 2003.
- 3 MR. EVERDELL: One moment, your Honor.
- 4 No further questions, your Honor.
- 5 THE COURT: All right. Mr. Rubinstein?
- 6 Remind me. Who is Belinda?
- 7 THE WITNESS: Belinda is the woman from the
- 8 government, the government auditor. Belinda Riley I believe is
- 9 her last name.
- 10 THE COURT: Thank you.
- 11 CROSS EXAMINATION
- 12 BY MR. RUBINSTEIN:
- 13 Q. Good afternoon, Mr. Spring.
- 14 A. Hello.
- 15 Q. Now, just to clarify something, you were shown something
- 16 from Exhibit 147 that's in evidence.
- 17 THE COURT: Exhibit 147?
- 18 MR. RUBINSTEIN: Yeah, Exhibit 147.
- 19 Q. Do you have that in front of you, sir?
- 20 A. Hopefully I will in a moment. There it is. Yes, I do.
- 21 Q. Where is the part about the -- where is the part about the
- 22 dinghy?
- THE COURT: About what, sir?
- 24 Q. You said something, a sentence started with --
- THE COURT: I can't hear you when you get a away from SOUTHERN DISTRICT REPORTERS, P.C.

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8667KAR5 Spring - cross

- 1 the mike.
- 2 MR. RUBINSTEIN: Sorry, Judge. I'm just trying to
- 3 locate what was shown on the projector as Exhibit 47, the first
- 4 page.
- 5 THE COURT: 147?
- 6 DEPUTY COURT CLERK: 147?
- 7 MR. RUBINSTEIN: I just want the witness to tell me,
- 8 because there was a line put on the screen it started with
- 9 "because" I think.
- 10 THE COURT: Do you want the line put back on the
- 11 screen?
- MR. RUBINSTEIN: Yes.
- 13 THE COURT: Then we'll put it back on the screen.
- 14 Let's move it along.
- There it is.
- 16 MR. RUBINSTEIN: No, that wasn't the line, Judge.
- 17 THE COURT: OK. Is that all right? Do you have it
- 18 now?
- 19 MR. RUBINSTEIN: Oh, I see it now. OK. OK.
- Now, I just missed it in reading it, that's all.
- 21 Q. You were working for the Ken Jackson group when you started
- 22 your involvement with Dr. Karron?
- 23 A. That's correct.
- Q. And how long did you work for the Ken Jackson group prior
- to getting involved with Dr. Karron and CASI?

8667KAR5 Spring - cross

- 1 A. My training by Mr. Jackson started in late 1999, and I
- 2 began working for CASI as a subcontractor in July of 2002, so
- 3 we're basically talking a little over two years.
- 4 Q. And you were the sole -- Ken Jackson is a company?
- 5 A. He is an LLC, that's correct.
- 6 Q. And he has -- are you the only employee?
- 7 A. No. I don't remember then. Currently he has five people
- 8 on his team. I am not an employee. I am a subcontractor. I
- 9 am a 1099 person.
- 10 Q. So, you were a subcontractor of Jackson assigned to work at
- 11 CASI.
- 12 A. Correct.
- 13 Q. And your marching orders were to correct the books,
- 14 correct? Is that right?
- 15 A. That was my understanding from the defendant, yes.
- 16 Q. Well, when Jackson -- when they sent you on this
- assignment, did Jackson tell you that they were having problems
- 18 with their books?
- 19 THE COURT: Objection sustained to the form of the
- 20 question.
- 21 Q. Well, is the first time --
- 22 THE COURT: It calls for a hearsay answer.
- 23 Q. Was the first time you learned that you were being hired to
- 24 correct the books when you met with Dr. Karron?
- 25 A. I don't actually recollect the exact nature of the

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8667KAR5 Spring - cross

- 1 conversation. I was aware once I sat down with Dr. Karron that
- 2 there were corrections that needed to be made for the books in
- 3 preparation for the audit by the ATP-appointed person Joan
- 4 Hayes.
- 5 Q. It was your understanding that Joan Hayes was appointed by
- 6 ATP?
- 7 A. Yes, she was the third-party auditor, that was my
- 8 understanding.
- 9 THE COURT: You're correcting your answer?
- 10 THE WITNESS: Well, she had to come from somewhere,
- 11 your Honor, and I don't believe she was hired by CASI. So,
- 12 yes, I am making an assumption that if she was not appointed by
- 13 CASI, was not appointed by myself or Mr. Jackson, ATP was the
- 14 only thing.
- 15 THE COURT: You don't know the answer.
- 16 THE WITNESS: But I do not know the exact answer, no.
- 17 Q. Is that because Joan Hayes was an independent auditor?
- 18 A. I --
- 19 MR. EVERDELL: Objection.
- 20 A. -- believe Ms. Hayes is an independent auditor, yes.
- 21 Q. And were you hired to reconcile the bookkeeping system at
- 22 CASI?
- 23 A. That would have been one of the functions that one would
- 24 have done in preparation for preparing income and expense
- 25 statements that would be suitable for an audit, yes.

8667KAR5 Spring - cross

1 Q. And you were given the task of getting the books in order

- for an independent audit required by ATP, correct?
- 3 A. That was my understanding.
- 4 Q. The fact that your -- and did you find -- did you ascertain
- 5 that there was a Quick Books system in place at CASI?
- 6 A. There was a Quick Books system in place at CASI, yes.
- 7 Q. And were you familiar with Quick Books when you got this
- 8 assignment to work at CASI?
- 9 A. Yes, yes.
- 10 Q. And is it fair to say that the Quick Books at CASI were a
- 11 mess?
- MR. EVERDELL: Objection.
- 13 THE COURT: Overruled. I will get his judgment.
- 14 A. Yes. I mean that's kind of relative, but they could have
- 15 been in better shape.
- 16 Q. And the books, it was your opinion that the books were not
- in good condition, right?
- 18 A. Yes.
- 19 Q. Do you have any records, any records of how the books were
- 20 initially kept in this Quick Books system?
- 21 A. You mean earlier? I'm not quite sure I understand the
- 22 question.
- 23 Q. When you started there and you say that there were problems
- 24 with the books, do you have any -- did you download any disks,
- 25 or did you --

- 1 A. No.
- 2 Q. -- or did you make any hard copies to show us that --
- 3 A. I don't recollect. I was dealing both with Quick Books and
- 4 the personal side of things and Quicken.
- 5 Q. Dr. Karron requested that you go through his personal
- 6 accounts, did he not?
- 7 A. Yes, he did.
- 8 Q. And his personal accounts, they were related or unrelated
- 9 to CASI?
- 10 A. I would say it was both.
- 11 THE COURT: Well, let me ask you, personal accounts,
- 12 were you given more than Quicken, the Quicken account?
- 13 THE WITNESS: My recollection, your Honor, was that
- 14 Quicken tracked the defendant's personal expenses.
- 15 THE COURT: I see. But if he had some other method of
- 16 keeping track of his expenses separate and apart from that --
- 17 THE WITNESS: -- I don't remember being aware of that.
- 18 There may have been, but --
- 19 THE COURT: When you are talking about personal
- 20 accounts, you are talking about whatever was on Quicken.
- 21 THE WITNESS: Correct.
- 22 THE COURT: All right.
- 23 Q. And also the CASI books were kept in Quicken, right?
- MR. EVERDELL: Objection.
- 25 THE COURT: That's not the testimony so far.

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 Q. The CASI books, the records related to the NIST ATP grant,
- 2 were they also kept in the Quicken system?
- 3 A. Well, no, they were kept in the Quick Books system, except
- 4 for those items I was asked to extract, as I testified
- 5 previously, in the Quicken.
- 6 Q. So, did you find when you were doing the Quicken part for
- 7 Dr. Karron's personal that Dr. Karron had made advances to the
- 8 ATP grant loans, loans to the ATP grant?
- 9 A. Loans to the ATP grant?
- 10 O. Right.
- 11 A. He may have. I do not recollect that.
- 12 Q. There were times when Dr. Karron would go into the Quick
- 13 Books himself, correct?
- 14 A. I believe so, yes.
- 15 Q. And the Quick Books are the books you just said that were
- 16 related to NIST, is that right?
- 17 A. Sorry. Could you repeat that, please?
- 18 Q. The Quick Books were the files that were related to NIST,
- 19 correct?
- 20 A. Correct.
- 21 Q. And in fact when Dr. Karron would do that, he would
- 22 generally mess up the data that was inside the Quick Books,
- 23 correct?
- 24 A. It wasn't so much an issue of whether, for example, the
- amount of the check was written correctly. It was more of a SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR5 Spring - cross

1 question as to whether the purpose of the money being spent was

- 2 assigned correctly.
- 3 THE COURT: Let me ask you something. You say that
- 4 Quicken was Dr. Karron personal.
- 5 THE WITNESS: Personal.
- 6 THE COURT: And you say that Quick Books was the
- 7 business.
- 8 THE WITNESS: Business side.
- 9 THE COURT: But what about the part of CASI that was
- 10 not NIST?
- 11 THE WITNESS: That was also Quick Books.
- 12 THE COURT: That was also Quick Books.
- 13 THE WITNESS: In Quick Books, yes.
- 14 THE COURT: So it was all CASI records were in Quick
- Books.
- 16 THE WITNESS: Yes, that's correct. Within Quicken,
- 17 however, as I testified at the beginning of the other
- 18 questioning, there were many business expenses also held within
- 19 Quicken, the personal system, that I was told needed to go into
- 20 the business system, the Quick Books, so it was a little bit of
- 21 a succotash, a mix, little bit of this and a little bit of
- 22 that.
- 23 THE COURT: So within the quick book system was there
- 24 any break-down between what was the ATP grant money and what
- was other money?

Spring - cross

8667KAR5

1 THE WITNESS: Certainly the income that came in was

- 2 clearly tagged as ATP. On the expenses side it was a mix of
- 3 some things were correctly tagged as ATP.
- 4 But if I can just take a moment to explain, it's very
- 5 simple. These are very simple systems to use, so one has to
- 6 create a block of accounts that would say, for example,
- 7 ATP-allowable, and then under ATP-allowable you would have
- 8 things, equipment purchases, etc., etc. That would be one
- 9 chunk of data. It might have many entries, but that would be
- 10 one chunk. And then within that same system, within what we
- 11 call a file, you would have CASI expenses. That would be
- 12 non-ATP expenses. And again all of those would have several
- 13 subgroups. It's not rocket science actually. It's logical and
- 14 straightforward. And these things can break out very easily.
- 15 But it's the old saying, garbage in, garbage out.
- 16 Q. You said they could break up very easily?
- 17 A. They break out very easily.
- 18 Q. Well, when you say that there was a mess in these books in
- 19 the computer, what do you mean by that?
- 20 A. Both in the Quicken, the personal finance side, because I
- 21 was asked to go back and reconcile, balance the checkbook if
- 22 you will, on the Quicken side, only we are balancing a check
- 23 book inside the computer as opposed to sitting there and
- 24 writing it down with an actual checkbook. There were things I
- 25 see actually quite a bit, what we call balance hacks. Maybe we SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR5

Spring - cross

- 1 are all familiar with that. If you can't balance the check
- 2 book and you get frustrated enough, you just write in a number
- and go checkbook is balanced and go on doing something else.
- 4 So there were some instances of that. That wasn't such a great
- 5 concern to me because --
- 6 THE COURT: Just -- I think you answered the question.
- 7 Q. You were given a free run of the computer system, correct?
- 8 A. I was allowed access to both Quicken and Quick Books, yes.
- 9 Q. And in fact the Quick Books had in it what's called an
- 10 audit trail, did it not?
- 11 A. Well, there are different ways of looking at information
- 12 you have previously put into the system, yes.
- 13 Q. Well, there is a specific system, is there not, called an
- 14 audit trail?
- 15 A. Yes.
- 16 Q. So you could determine who inputted what into the system,
- 17 correct?
- 18 A. Yes.
- 19 Q. Did you have a code yourself to go into --
- 20 A. There was one -- there was one password that myself, the
- 21 defendant and Nicki Winter used to open up the program. I
- 22 never used the audit trail myself.
- 23 Q. And did there come a time in April that you began building
- 24 a new Quick Books register for CASI?
- 25 A. I don't remember the exact date, but the time frame sounds

 SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR5

Spring - cross

- 1 correct, because the auditor would have been -- Joan Hayes
- 2 would have probably been insisting on such a thing.
- 3 O. Well, what does it mean to build a new Quick Books
- 4 register? What does that mean?
- 5 A. Quite simple really. One looked at starting, probably even
- 6 starting prior to the date of the project October 1, 2001, and
- 7 started out with a clean file so that all the extraneous data
- 8 from previous years were out of the system, starting on a fresh
- 9 page.
- 10 Q. You had to change stuff that was already there?
- 11 A. Well, I mean there would have been many things that were
- 12 entered that were correct, so that wasn't changing them; that
- 13 was just reentering them.
- 14 Q. But you yourself voided a number of checks, did you not?
- 15 A. Voided checks?
- 16 Q. Yes, in the system.
- 17 A. If a check was written, sent to the payee, presented at the
- 18 bank and appeared on the bank statement, you would not void a
- 19 check like that.
- 20 Q. But did you void other checks?
- 21 A. I don't have any recollection.
- 22 O. During the time --
- 23 A. I may have, but they would have been checks that were not
- 24 presented to the bank.
- Q. During the time you were the bookkeeper, you supervised SOUTHERN DISTRICT REPORTERS, P.C.

- 1 this woman Nicki, right?
- 2 A. Correct, to some extent, yeah. She had some experience,
- 3 but I was asked to look at what she had done.
- 4 Q. And it's a fact that you were informed by Dr. Karron that
- 5 Nicki got things confused and she didn't get the data
- 6 correctly?
- 7 A. That I believe was his assessment.
- 8 Q. Now, during the time you started being the bookkeeper in
- 9 July or August 2002 -- correct?
- 10 A. No, that is not correct. In July of 2002 Nicki Winter was
- 11 on staff.
- 12 Q. No, I said you.
- 13 A. She was the bookkeeper.
- 14 Q. And you were what?
- 15 A. I was called in to help prepare for the ATP audit, which is
- 16 to say I wasn't doing the day-to-day invoice inputting, check
- 17 writing, payroll, etc.
- 18 Q. Did there come a time that you took over the
- 19 responsibilities of the bookkeeper?
- 20 A. At some point I did because Nicki Winter left.
- 21 Q. And when was that that you took over the responsibility of
- the bookkeeper?
- 23 A. I don't recollect the date.
- Q. Well, during the time that -- for how long a period of time
- 25 would you say that you were the bookkeeper for CASI?

8667KAR5 Spring - cross

1 A. I left the project in October of '03. I don't know, five

- 2 or six months.
- 3 Q. And during that period of time --
- 4 A. Seven months.
- 5 Q. -- were there any bounced checks?
- 6 A. Yes. I wasn't the only one writing checks, however.
- 7 Q. How often were checks bounced during the time that you were
- 8 the bookkeeper, sir?
- 9 A. I have absolutely no idea. I was not doing the sole
- 10 bookkeeping either.
- 11 THE COURT: Could you write checks?
- 12 THE WITNESS: I wrote checks, but I did not sign them.
- I was not a signatory on the account.
- 14 THE COURT: Well, how were the checks signed?
- 15 Electronically or personally?
- 16 THE WITNESS: They were signed personally by the
- 17 defendant.
- 18 THE COURT: Could they be signed electronically under
- 19 that system?
- 20 THE WITNESS: Yes. I don't recollect that that's the
- 21 system that we had in place, but there are ways to write
- 22 electronic checks.
- THE COURT: These are personal.
- 24 THE WITNESS: Personally signed. And Dr. Karron wrote
- 25 many of the checks himself.

- 1 Q. And the checks would be generated through the Quicken
- 2 system.
- 3 A. Right. You would input your data, you're writing a bill to
- 4 whoever, you ask the system to pay the bill, and Quicken and
- 5 Quick Books both make formatted checks, three-part checks, you
- 6 stick them into your printer, hit print, and out comes the
- 7 check, and all it needs is signing.
- 8 Q. And then you would present the checks that were generated
- 9 to Dr. Karron.
- 10 A. For his signature.
- 11 Q. And he would require a backup, an invoice to accompany the
- 12 check.
- 13 A. The only way if I was entering --
- 14 THE COURT: Did he or didn't he?
- THE WITNESS: Yes, he did.
- 16 THE COURT: All right.
- 17 THE WITNESS: From me.
- 18 Q. And you also were involved in helping with his personal tax
- 19 returns, his being Dr. Karron's?
- 20 A. His personal tax returns?
- 21 O. Right.
- 22 A. Myself? Not -- I have no tax experience. I am not an
- 23 accountant. I think that's highly unlikely. The only thing I
- 24 might have done was generate reports out of Quicken.
- Q. Didn't you create at Hayes' request spread sheets out of SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR5 Spring - cross

1 the Quick Books in regard to Dr. Karron's income and expenses?

- 2 A. I don't recollect that. And Dr. Karron's personal expenses
- 3 were not in Quick Books, they were in Quicken.
- 4 Q. Well, did you create spread sheets from the Quick Books for
- 5 Joan Hayes?
- 6 A. Ms. Hayes would have asked me to be preparing reports out
- 7 of Quick Books related to the audit, yes.
- 8 Q. So it was the documents that you created that Joan Hayes
- 9 relied upon in relation to the audit, correct?
- 10 THE COURT: Objection sustained. There's more than
- 11 one conclusion in that question.
- MR. RUBINSTEIN: Pardon?
- 13 THE COURT: There is more than one conclusion the
- 14 witness would have to be responding to in that question. Limit
- 15 your question to one conclusion so that you're sure that the
- 16 witness understood that there were two conclusions and not one
- 17 conclusion.
- 18 Q. Did you inform -- did Joan Hayes in January of 2003 send
- 19 you an e-mail related to spread sheets for you to create?
- 20 A. I would have to see evidence of that e-mail. I have
- 21 absolutely no idea of an e-mail that may or may not have been
- 22 sent five years ago.
- 23 Q. Well, you were pretty good with the e-mails before?
- MR. EVERDELL: Objection.
- 25 A. Well --

8667KAR5 Spring - cross

- 1 THE COURT: Objection sustained. Let's go.
- 2 Q. Let me show you what is marked as Government Exhibit
- 3 3507-E. This is one of the documents contained therein. It's
- 4 page 2 of 36 it says on top. Take a look at that starting at
- 5 the red underlining.
- 6 A. OK.
- 7 O. Does that refresh your recollection that Hayes asked you to
- 8 create spread sheets?
- 9 A. Yes, Joan Hayes is referring to spread sheets. I probably
- 10 would have called them reports, but I think that's just a
- 11 matter of terminology.
- 12 THE COURT: What does it read, this e-mail you're
- 13 referring to?
- 14 Q. Spreadsheet, there is a hard copy? Is that an actual
- 15 document?
- 16 A. It would have been a piece of paper, yes.
- 17 Q. And, by the way, did you create two --
- 18 THE COURT: I just want to know where on page 2 you're
- 19 referring to.
- 20 MR. RUBINSTEIN: It's -- can you see that, Judge?
- THE COURT: The top? Which one?
- 22 MR. RUBINSTEIN: The red underlining, Judge. Only the
- 23 pink means something, but the red underlining.
- 24 THE COURT: Spreadsheet sample for sample cost for --
- MR. RUBINSTEIN: No, that's the wrong page. That's SOUTHERN DISTRICT REPORTERS, P.C.

8667KAR5 Spring - cross

- 1 page 3 of 36. This is page 2.
- THE COURT: I am on page 2 of 36.
- 3 MR. RUBINSTEIN: Can I approach, your Honor?
- 4 THE COURT: I don't know where you are.
- 5 MR. RUBINSTEIN: Mine says 2 of 36, Judge.
- 6 THE COURT: Oh, you're up in here.
- 7 MR. RUBINSTEIN: Yes.
- 8 Q. By the way, did you create two sample spread sheets related
- 9 to Dr. Karron's income tax?
- 10 A. I don't recollect that.
- 11 Q. Do you recall testifying before that you didn't have
- 12 anything to do with his personal income tax return? Correct?
- 13 A. I don't file income tax returns, personal or otherwise, for
- 14 any of my clients.
- 15 Q. But the question is whether or not you as part of your
- 16 responsibilities there was to help prepare information for Dr.
- 17 Karron's personal income tax return filings.
- 18 A. It's possible.
- 19 Q. Well, why don't you take a look at page 3 of the same
- 20 document, starting one paragraph down. Did you send an e-mail
- 21 to Joan Hayes?
- 22 A. Yes, that's an e-mail I would have written, that's correct.
- 23 Q. And in that e-mail did you provide that --
- MR. EVERDELL: Objection.
- 25 THE COURT: Objection sustained.

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8667KAR5 Spring - cross

- 1 MR. RUBINSTEIN: Well, I will offer that portion of
- 2 the e-mail in evidence.
- 3 THE COURT: Do you want the entire e-mail? I think it
- 4 would have to be offered if you want to offer it.
- 5 MR. RUBINSTEIN: OK. I will offer the entire e-mail.
- 6 MR. EVERDELL: Your Honor, I don't understand the
- 7 relevance of this, so I object.
- 8 THE COURT: He is offering it. It's part of his
- 9 cross-examination.
- 10 MR. RUBINSTEIN: Q, Defendant's Q for identification
- 11 we offer into evidence, your Honor.
- 12 MR. EVERDELL: May I see what you're offering?
- MR. RUBINSTEIN: Sure.
- 14 DEPUTY COURT CLERK: Is it one page or the whole
- 15 thing?
- MR. RUBINSTEIN: It's one page.
- 17 THE COURT: Well, it starts on the page before and
- 18 runs through the page, that third page, and it ends on the
- 19 fourth page.
- DEPUTY COURT CLERK: So it's pages 2, 3 and 4?
- 21 MR. RUBINSTEIN: On the top it says page 3 of 36 is
- 22 what it says, and so it's --
- THE COURT: But the subject matter.
- MR. RUBINSTEIN: Page 4 and then page 3.
- DEPUTY COURT CLERK: Just two pages, page 3 and page SOUTHERN DISTRICT REPORTERS, P.C.

- 1 4.
- MR. RUBINSTEIN: The top of page 4.
- 3 THE COURT: I think you need the bottom of page 2 too,
- 4 because that's the subject matter.
- 5 MR. RUBINSTEIN: OK. The bottom of page 2, all of
- 6 page three and the top of page 4.
- 7 May I proceed, your Honor?
- 8 MR. EVERDELL: Objection.
- 9 Q. Did you write the following to Joan Hayes: "so, what I did
- 10 was create two sample spread sheets for the first tax year in
- 11 question, 1998 through 1999. The first things that have more
- 12 detail is I think the one that you will prefer." Did you
- write that to Joan Hayes?
- 14 A. This is in reference to Dr. Karron's personal taxes?
- 15 Q. Right.
- 16 A. Yes, it sounds like my verbiage, yes.
- 0. And is it a fact that Dr. Karron had not in this -- and
- 18 this e-mail was written in 2003, and Dr. Karron had yet to file
- 19 his 1999 tax returns, correct?
- 20 A. One would make that presumption. I don't remember. It is
- 21 probably a question better to be asked of Joan Hayes since she
- is the person being referenced here, not myself.
- 23 THE COURT: What about CASI's income tax?
- THE WITNESS: I don't recollect, your Honor, whether
- 25 the defendant was filing his taxes or his company taxes. That SOUTHERN DISTRICT REPORTERS, P.C.

- 1 wasn't part of my job.
- 2 THE COURT: But you don't know whether this is CASI
- 3 income taxes or his income taxes, do you?
- 4 THE WITNESS: I don't actually. Frankly, given that
- 5 Joan Hayes is the person that this is primarily addressed to
- 6 and about, I would think it had to do with CASI's taxes as
- 7 opposed to his personal taxes.
- 8 Q. In fact, did you send an e-mail to Joan Hayes saying that
- 9 you felt that she was wearing two hats by being the auditor and
- also dealing with Dr. Karron's personal matters?
- 11 A. Yes. Yes, I do recollect that.
- 12 Q. So, in fact you questioned whether or not she was an
- independent auditor, correct?
- 14 A. Well, anyone who is ever put in the position of wearing two
- 15 hats, you know, you have to make sure that you can keep one
- side very separate from the other.
- 17 Q. So, does that now refresh your recollection as to who
- 18 retained Joan Hayes' service to be "the independent auditor" on
- 19 the NIST ATP audit?
- MR. EVERDELL: Objection.
- 21 THE COURT: Objection overruled.
- 22 A. No, it doesn't.
- 23 Q. When you went into -- besides going into Quicken for Dr.
- 24 Karron's personal accounts, did you have anything to do with
- 25 his Mastercard credit card?

- 1 A. In terms of entering data?
- 2 Q. Yes.
- 3 A. I don't recollect.
- 4 Q. How about reviewing the expenditures to see if whether or
- 5 not there were any ATP NIST-type expenses that were absorbed by
- 6 Dr. Karron on his Mastercard?
- 7 A. Well, as I was stating in my previous testimony, there were
- 8 expenses in the personal Quicken accounts which I was informed
- 9 of by the defendant before I started the gleaning process,
- 10 getting this data out of Quicken. Some of those might have
- 11 been on a credit card. I don't recollect.
- 12 Q. Were you aware though that Dr. Karron had an American
- 13 Express card that he utilized for the ATP grant?
- 14 A. There was I believe within Quick Books an American Express
- 15 what we call ledger.
- 16 Q. And did you have any understanding that the American
- 17 Express card was used strictly for the business of CASI and the
- 18 ATP grant?
- 19 A. I would have to see the individual items entered to
- ascertain whether it was personal, CASI or ATP.
- 21 Q. And is it fair to say that you changed the Quick Books
- 22 booking system to include non-NIST categories?
- 23 A. Well, in a sense the CASI system or everything that wasn't
- 24 ATP or NIST was CASI, so that data was in there already. The
- 25 main job was to make very clear what was allowable ATP expenses SOUTHERN DISTRICT REPORTERS, P.C.

1 and what was a nonallowable ATP expense.

- Q. Do you recall being interviewed by the agents at the first
- 3 table here on September 21, 2001 and signing an affidavit?
- 4 A. In 2001? No.
- 5 Q. 2004. Sorry. I misspoke.
- 6 A. It was a beautiful autumn day. I suppose September 21st
- 7 was the actual day. I don't recollect.
- 8 (Continued on next page)

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- 1 BY MR. RUBINSTEIN:
- Q. Do you recall, without being specific as to September 21st,
- 3 2004, do you recall meeting with the agents seated at the first
- 4 table here, Ms. Garrison?
- 5 A. I recall meeting them, yes, absolutely; Kirk and Rachel,
- 6 yes.
- 7 THE COURT: Ms. Garrison you're talking about?
- THE WITNESS: That's correct, your Honor.
- 9 THE COURT: All right.
- 10 Q. And where did you meet them?
- 11 A. I was working in my home office on West 29th Street, and on
- 12 that beautiful autumn day and working on one of my client's
- 13 books and the door bell rang, and they asked to come in to see
- 14 me. They identified themselves and asked if they could come up
- 15 and speak with me.
- 16 Q. And did you tell them that you began working for Dr.
- 17 Karron, you changed the Quick Books bookkeeping system for the
- 18 ATP project to include a non-NIST category for CASI spending?
- 19 A. I'm sorry, could you repeat the question?
- 20 Q. Yeah. Did you tell them at that interview, when I began
- 21 working for Dr. Karron, I changed the Quick Books bookkeeping
- 22 system for the ATP project to include a non-NIST category for
- 23 CASI spending?
- 24 A. Well, yes. As I was saying a few minutes ago, if I may
- 25 repeat myself just briefly.

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1 Q. The question is did you tell that to --

- 2 THE COURT: Just did you say that.
- 3 Q. To the agents?
- 4 THE COURT: Yes or no.
- 5 A. I want to be sure it's understood what that means, what I,
- 6 what that statement means.
- 7 THE COURT: Wait.
- 8 A. Okay.
- 9 THE WITNESS: So maybe you could rephrase the
- 10 question.
- 11 THE COURT: The answer calls for a yes or no.
- 12 Q. Now, it's a job --
- 13 THE WITNESS: I have to answer no since I don't
- 14 understand the question.
- 15 Q. You didn't say that to the agents? It's not your language
- in an affidavit that you had with the agents?
- 17 A. If you want to quote directly from the affidavit, I will be
- 18 happy to say yes or no.
- 19 Q. All right. Well --
- 20 THE COURT: Well, then show him what --
- 21 Q. I'll show you what's been --
- 22 THE COURT: The proper way is not to quote from
- 23 something that's not in evidence.
- MR. RUBINSTEIN: It's 3507A?
- THE DEPUTY CLERK: 3507A.

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1 Q. A, as in apple. I point your attention where I have a

- 2 number nine on the side?
- 3 A. Uh-huh.
- 4 Q. See after reading that if it refreshes your recollection as
- 5 to what you said to the agents?
- 6 A. Yes, that's correct.
- 7 Q. So prior to the time that you became a bookkeeper or was
- 8 involved in the bookkeeping at CASI, their Quick Books system
- 9 did not have a category called non-NIST items?
- 10 A. Everything that was not ATP related would, by definition,
- 11 be non-NIST related, it would be CASI related.
- 12 THE COURT: That isn't answering the question.
- THE WITNESS: I'm sorry, your Honor.
- 14 THE COURT: The question is when you came there,
- 15 before you got there.
- 16 THE WITNESS: Right.
- 17 THE COURT: It's only -- the Quick Books was only used
- 18 for the ATP NIST.
- 19 THE WITNESS: No, your Honor, that's not correct. It
- 20 was used for CASI.
- 21 THE COURT: And you created -- and only when you got
- there did you create the non-NIST category for CASI's spending,
- is that true; that only when you got there, the non-NIST
- 24 category for CASI spending was created. Follow me?
- THE WITNESS: I do follow you. No.

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- 1 THE COURT: About two big categories, remember?
- THE WITNESS: Correct. This is either CASI or ATP.
- 3 THE COURT: All right.
- 4 THE WITNESS: Simple as that. My recollection is no,
- 5 that the defendant was already using Quick Books for his CASI
- 6 business.
- 7 THE COURT: As distinct from his NIST business.
- 8 THE WITNESS: Correct, that's correct.
- 9 THE COURT: All right.
- 10 THE WITNESS: Simple, yeah.
- 11 Q. And what was he using for his NIST business?
- 12 THE COURT: He said that he was using Quick Books for
- 13 his NIST business, and he was already using it for his non-NIST
- 14 business, with CASI.
- 15 THE WITNESS: That's correct.
- 16 Q. Is it fair to say that there was no non-NIST category in
- 17 the system before you got there?
- 18 A. No, that's not correct.
- 19 Q. So tell us what you meant in your affidavit when you said
- 20 that, when I began working for Dr. Karron, I changed the Quick
- 21 Books bookkeeping system for the ATP project to include a
- 22 non-NIST category for CASI spending?
- 23 A. Right, this was what we've been talking about for a while
- 24 now, which is, make sure it's clear in Quick Books that
- anything that was an ATP/NIST expense was marked as such, and SOUTHERN DISTRICT REPORTERS, P.C.

- 1 everything that wasn't, would be non-NIST or CASI related.
- Q. And you explained that to Dr. Karron?
- 3 A. Oh, absolutely.
- 4 Q. Did he ever tell you, don't do that, keep all the expenses
- 5 together?
- 6 A. Keep all the expenses together?
- 7 Q. Did he ever tell you not to do that?
- 8 A. I don't recollect.
- 9 Q. In fact, you did segregate NIST expenses from non-NIST
- 10 expenses, right?
- 11 A. I did separate the two out, that's correct.
- 12 Q. And the questions you had with Dr. Karron was a dispute as
- 13 to whether or not a particular expense should or should not be
- included in that category?
- 15 A. That is correct.
- 16 Q. And you recategorized expenses that you believed were not
- for the ATP project, correct?
- 18 A. Based on my understanding the regulations, yes.
- 19 Q. And then you also put expenses that you believe were for
- the project, correct?
- 21 A. Yes, based on my understanding of the regulations, that's
- 22 correct.
- 23 Q. And you did this based upon the NIST guidelines as -- since
- you had read them over?
- 25 A. That's correct.

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1 Q. Right? Did you also read the CFR that relate to this?

- 2 A. The CFR?
- 3 Q. Yes. You know what the CFR is?
- 4 A. Could you tell me what acronym stands for, please?
- 5 THE COURT: Code of Federal Regulations.
- 6 THE WITNESS: If this is the 30-page document that I
- 7 called the regulations, the answer would be yes.
- 8 Q. What if it's a 150-page document?
- 9 A. I don't recollect reading a 150 page document. That I
- 10 would remember.
- 11 Q. Do you remember reading a 70 page document?
- 12 A. I don't recollect.
- 13 Q. Did you ever have contact with anybody at ATP and ask them
- 14 any questions as to what you should classify an expense as
- 15 whether it's to be a NIST expense or a non-NIST expense?
- 16 A. I did not, I did not -- no.
- 17 Q. Did Dr. Karron ever ask you to change the information that
- 18 was the backup for a particular expense?
- 19 A. I'm sorry, what do you mean by that?
- 20 Q. Well, any -- in his system, didn't he scan virtually every
- 21 piece of paper that he came in contact with into the system?
- 22 A. Yes, he was forced to.
- Q. And that was in place before you ever got there?
- 24 A. The scanning?
- 25 Q. The scanning.

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Spring - cross

- 1 A. Not as mostly related to the ATP project, that is
- 2 incorrect.
- 3 O. Any check that Dr. Karron would sign, you had to present to
- 4 him an invoice or some backup to show that it was a bona fide
- 5 expense of the project, correct?
- 6 A. Any, any check that was written that was based on a bill,
- of course, you couldn't enter the -- you couldn't create a
- 8 check unless you knew what the amount was for to the payee
- 9 should be.
- 10 Q. Did you discuss which categories, whether some expense was
- 11 a NIST expense or not a NIST expense, with any employees of
- 12 CASI?
- 13 A. Employees, that would be Niki Winter -- who else, Jim Cox,
- 14 other people?
- 15 Q. Yes.
- 16 A. Perhaps, in general conversation. I would not have taken
- 17 guidance from any of those people. They were not appropriate
- 18 to the financial dealings of the company or the project.
- 19 Q. Did you speak to Joan Hayes about what was an appropriate
- NIST expense?
- 21 A. Yes, that's already been referenced in some of those
- 22 previous e-mails I read.
- 23 Q. And did you, in your affidavit, say that you made your
- determination as to what was a non-NIST expense based upon
- discussions with CASI employees and CASI accountant and your SOUTHERN DISTRICT REPORTERS, P.C.

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1 understanding that NIST ATP regulations?

- 2 A. Yeah.
- 3 THE WITNESS: Your Honor, may I go back and --
- 4 Q. Did you say that?
- 5 THE WITNESS: The question has prompted something, if
- 6 I may respond.
- 7 THE COURT: No.
- 8 Q. No.
- 9 THE COURT: Just answer the question.
- 10 A. Yes, there were discussions with the business manager.
- 11 Q. And who was the business manager?
- 12 A. For year one it was Lee Gerfein, and for year two, Bob
- 13 Benedict.
- 14 Q. And were you familiar with Gurfein's employment contract?
- 15 A. Very tangentially.
- 16 Q. Were you familiar with the fringe benefits that Gurfein was
- 17 entitled to?
- 18 A. I knew there was an employee benefits plan, he was the
- 19 business manager, he would probably be participating in it.
- Other than, there was no formal plan.
- 21 Q. Were you aware that those kind of expenses, even if you
- 22 didn't have a formal plan, if they were, if they were in place
- 23 prior to the start of the grant, that they were allowable?
- MR. EVERDELL: Objection.
- THE COURT: Objection sustained.

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- 1 Q. Well, did you have discussions with Dr. Karron as to the
- 2 medical expenses and how they should be treated?
- 3 A. I'm sure I must have at some point, certainly.
- 4 Q. And did Dr. Karron explain to you that you didn't have to
- 5 have a written plan in place for it to be allowable?
- 6 A. He may have said that. It doesn't mean it was true.
- 7 Q. Doesn't mean it was false, right?
- 8 A. Correct.
- 9 Q. Now, you said in year two that by November, 50 percent of
- 10 the grant money had been expended in year two?
- 11 THE COURT: I don't think he said that.
- 12 MR. EVERDELL: Objection.
- 13 A. That is not what I said, no.
- 14 Q. Well you discussed in, in e-mail 142, exhibit --
- 15 THE COURT: Exhibit 142.
- 16 MR. RUBINSTEIN: Government's exhibit 142.
- 17 Q. Do you recall testifying that within a month and a half of
- 18 the second year he was using up 50 percent?
- 19 A. Yes. If you factored in the monthly receivables, the
- 20 expenses from year one that he hadn't paid yet, which I believe
- 21 were in excess of \$110,000.
- 22 Q. And was money available in the NIST account to pay those
- 23 expenses?
- 24 A. Frankly, no, because you were only allowed to drawdown from
- the ATP or NIST funds a certain amount of funds every month.

Spring - cross

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- 1 You just couldn't go in there and turn on the tap and take as
- 2 much as you want to.
- 3 Q. How do you know that?
- 4 A. How do I know that?
- 5 Q. Right.
- 6 A. Dr. Karron personally showed me on the computer the
- 7 drawdown system which is, as I said, were was all electronic.
- 8 Q. So he showed you, according to your testimony, that he was
- 9 limited?
- 10 A. That's correct.
- 11 Q. The amount of drawdown he could take at any particular
- 12 time?
- 13 A. Per month in year two, that is correct.
- 14 Q. So if the ATP people said that he could take all the money
- 15 at one time would that have any affect on your answer?
- MR. EVERDELL: Objection.
- 17 THE COURT: Objection sustained, form of the question.
- 18 Q. Are you aware of Dr. Karron making loans to CASI for the
- 19 purposes of ATP?
- 20 A. I do not recollect any such loan, no.
- 21 Q. Now, Dr. Karron explained to you that he was going to
- 22 Washington to attempt to convince the people at NIST to permit
- amendments and revisions to the budget, right?
- 24 A. Yes, I remember. I read rode that e-mail earlier.
- Q. And do you know whether or not he actually went to

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- 1 Washington, D.C.?
- 2 A. My recollection was he did.
- 3 O. And do you know if he submitted any budget revisions,
- 4 requests for budget revisions?
- 5 A. I believe one of the points of the trip was to resubmit his
- 6 figures, yes.
- 7 Q. And did you have anything to do with creating numbers to
- 8 submit on financial statement revisions for the CASI NIST
- 9 budget?
- 10 A. I don't recollect. There were budget issues that were
- 11 happening at the same time as the audit by Joan Hayes was
- 12 happening.
- 13 Q. Wasn't Dr. Karron asking you for actuals, actual expenses?
- 14 A. Well, that would be what was actually spent, yes, at the --
- I mean that would be part of the process.
- 16 Q. That's what he was asking for were actual --
- 17 THE COURT: When are, when are we talking about?
- 18 Mr -- let's have a date, let's have an exhibit we're talking
- 19 about. You can't have the open ended covering two and a half
- 20 years. No one can tell the relevance of what they're asking
- and we're getting to the end here.
- 22 MR. RUBINSTEIN: Judge, I'm asking to recess at this
- 23 time.
- THE COURT: No, you're not.
- 25 MR. RUBINSTEIN: What? I'm asking -- it's my

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- 1 anniversary, Judge, and --
- 2 THE COURT: I'm sorry, I'm sorry. We're getting
- 3 through this witness, we are getting through this witness.
- 4 First I've heard of any anniversary party.
- 5 MR. RUBINSTEIN: Pardon?
- 6 THE COURT: First I've heard of any anniversary party.
- 7 MR. RUBINSTEIN: It's a fact. I'm married June 6th,
- 8 your Honor.
- 9 THE COURT: I don't dispute it.
- 10 MR. KWOK: Objection.
- 11 THE COURT: That's the first I heard of it and we've
- 12 got a witness on cross-examination longer than he was on direct
- 13 examination, and we're getting through this witness. But we've
- 14 got to do it in the next few minutes, not have these extended
- 15 pauses between questions.
- 16 These long conversations with your associate, really.
- 17 MR. RUBINSTEIN: Judge, there is a lot of material
- 18 here, Judge, you know.
- 19 THE COURT: It may be, but you have had a lot of time
- 20 to prepare for it.
- 21 MR. RUBINSTEIN: I wouldn't say that at all, Judge.
- 22 THE COURT: You just go right ahead, but you get it
- 23 done. Put a question.
- 24 BY MR. RUBINSTEIN:
- Q. Well, do you recall an exhibit 143, which is dated November SOUTHERN DISTRICT REPORTERS, P.C.

- 1 29th, on page --
- THE WITNESS: Could I get the exhibit back, please, so
- 3 I can reference it?
- 4 THE COURT: You don't see exhibits? Do you have a
- 5 copy of it for the witness? You ought to have the copies. You
- 6 better get them ready.
- 7 MR. RUBINSTEIN: 143.
- 8 A. Yes, it's here in my hand.
- 9 Q. And that, that's an e-mail that you received from Dr.
- 10 Karron on November 27th, 2002, right?
- 11 A. You're referring to, yes, November 27. I'm looking at that
- 12 part of e-mail chain.
- 13 Q. And in that e-mail, Dr. Karron advises you that he has to
- 14 be -- an opportunity to cover any cost or problems by a late
- 15 budget revision, correct? ATP has given him an opportunity to
- 16 cover any cost or problems by a late budget revision, right?
- 17 A. Yes, that's what he's telling me.
- 18 Q. And he tells you we need actuals that we could cast into
- 19 the budget revision, correct?
- 20 A. Yes.
- 21 Q. And he says, I thought we had actuals from the end of
- 22 September?
- 23 A. Yes.
- Q. And then if you go down, he says, I am also -- you see in
- 25 the middle of the page, I'm also concerned --

- 1 A. I do.
- 2 Q. -- that a number of costs are not identifiable from my
- 3 personal Quick Books?
- 4 A. Yes.
- 5 Q. Then on the next he says, I am trying to classify all of
- 6 the costs by ATP or CASI. I can't seem to classify the journal
- 7 entries you made as bill payments on my bills to CASI.
- 8 Correct?
- 9 A. I just want to read that sentence. Yes.
- 10 Q. He goes on to say, I also can't find the receipts from, for
- 11 each invoice and I can't match up the amounts on some journal
- 12 entries to invoices either?
- 13 A. Yes, that is what it says.
- 14 Q. And what is your response to him on that?
- 15 A. In the e-mail?
- 16 O. Yeah.
- 17 A. My e-mail response?
- 18 Q. Yeah.
- 19 A. Written the next day, Dr. K, I have my doubts about just
- 20 how much we can get through on Friday, as the priorities seem
- 21 to keep shifting, and Joan has her own needs, schedule, agenda,
- 22 which we must also take into account. I --
- THE COURT: Go ahead, read on.
- 24 A. I do believe that most of the data you are seeking for any
- 25 further budget revisions is actually there in the Q.B.'s, or

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1 Quick Book's or spread sheet files and probably just needs some

- 2 reformatting. Joan will be arriving at ten on Friday, and I
- 3 will be at CASI shortly before that.
- 4 Q. Nowhere in there do you dispute any of Dr. Karron's
- 5 complaints to you on a prior e-mail, right?
- 6 A. No.
- 7 Q. By the way, do you know, did Dr. Karron make sure that all
- 8 payroll taxes and other taxes were paid?
- 9 MR. EVERDELL: Objection.
- 10 Q. Did Dr. Karron --
- 11 THE COURT: All right.
- 12 Q. Make sure that all taxes, including payroll taxes, were
- 13 paid?
- 14 A. I was not involved in payroll for the most part, so I can't
- 15 answer that question. Those are tax reporting issues.
- 16 Q. You know whether or not Dr. Karron deferred receiving his
- 17 salary when the balances were low?
- 18 A. I don't know. My only recollection of payroll relates to
- 19 what I testified to before.
- 20 Q. Well, were you involved in generating the payroll checks?
- 21 A. After Niki Winter left, whatever people were being paid on
- 22 a weekly or biweekly basis. He did not use a payroll service.
- 23 THE COURT: Did you, did you do it or did he do it;
- 24 who did it?
- 25 THE WITNESS: I don't recollect totally, since Dr.

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1 Karron also wrote checks out of Quick Books, but I think I

- 2 probably would've written some checks which he would've signed.
- 3 THE COURT: Payroll checks?
- 4 THE WITNESS: Payroll checks, which he would've
- 5 signed.
- 6 THE COURT: All right.
- 7 Q. Now, you say that you had disagreements with Dr. Karron as
- 8 to certain expenses that occurred before the grant started
- 9 October 1st, 2001?
- 10 A. That's correct. I testified to that, that's true.
- 11 Q. And he believed, Dr. Karron believed that if he paid it
- 12 after the grants started --
- 13 THE COURT: Objection sustained as to the form of the
- 14 question. Next.
- 15 Q. Did Dr. Karron tell you that he believed if you paid the
- 16 expense after the grant started, it was okay to do that?
- 17 A. I don't recollect him saying that, no.
- 18 Q. Well, do you recall in your affidavit saying --
- 19 THE COURT: What are you referring to as his
- 20 affidavit?
- 21 MR. RUBINSTEIN: He signed an affidavit on
- 22 September -- on a beautiful autumn day.
- THE COURT: I missed the page.
- MR. EVERDELL: Objection.
- THE COURT: Has he got a copy of it before him?

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- 1 MR. RUBINSTEIN: I don't know, Judge.
- 2 THE COURT: You're asking about his affidavit.
- 3 MR. RUBINSTEIN: Yes.
- 4 THE COURT: Show it to him and do it the right way.
- 5 Come on.
- 6 MR. RUBINSTEIN: Judge, I would ask that --
- 7 THE COURT: You've asked the --
- 8 MR. RUBINSTEIN: He be given his documents, his 3500
- 9 documents.
- 10 THE COURT: You've asked the question, you know that.
- 11 MR. RUBINSTEIN: I know, but he should have --
- 12 THE COURT: Show him the documents, does this refresh
- 13 your recollection, et cetera.
- 14 MR. RUBINSTEIN: I know, but it would make a lot of
- 15 sense, in all due respect, your Honor, if they had given him
- 16 his own 3500 material.
- 17 THE COURT: I don't know whether they did or didn't.
- 18 I don't think he's supposed to recollect everything in there
- 19 anyway. That's why the rule is the way the rule is.
- 20 A. And what was your question, please?
- 21 Q. My question is whether you stated in your affidavit that
- 22 Dr. Karron believed that if an expense was paid after the start
- of the project, then it was a project expense?
- 24 A. Yes, that's the way I've written clearly. What I stated
- 25 too.

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1 Q. By the way, did he ever ask you to change a date on some

- 2 expense so that it would come within the time of the grant?
- 3 A. I don't recollect that, whether he did or not.
- 4 THE COURT: I think you asked that question before.
- 5 MR. RUBINSTEIN: I did not, your Honor.
- 6 THE COURT: All right.
- 7 BY MR. RUBINSTEIN:
- 8 Q. If he asked you to do that, that's something that you would
- 9 wouldn't forget, would you?
- 10 MR. EVERDELL: Objection.
- 11 THE COURT: Objection sustained to the form of the
- 12 question.
- 13 Q. If he asked you --
- 14 THE COURT: Objection sustained. It's obviously
- 15 hypothetical. Please.
- 16 Q. Now, Dr. Karron advised you that he was speaking to people
- 17 at NIST about equipment charges, correct?
- 18 A. Yes.
- 19 Q. Do you know -- are you a scientist, by the way?
- 20 A. Well, actually, my one of my college degrees is in
- 21 experimental psychology, so if you want to consider psychology
- 22 a science, the answer is yes.
- THE COURT: All right, let's.
- MR. RUBINSTEIN: With that, can't we leave with a
- smile on our face Judge, for the day?

- 1 THE COURT: The big smile will come when you say --
- Q. So it's fair to say that you had no knowledge of the
- 3 research project that Dr. Karron was given \$2 million over
- 4 three years to develop?
- 5 A. No, I did 'cause he was very proud to explain to me, and I
- 6 did have an interest.
- 7 Q. And did you -- were you aware of what each piece of
- 8 equipment was used for in the project?
- 9 A. Each piece, no.
- 10 Q. And you said that the rent was not deductible, allowable by
- 11 NIST, right?
- 12 A. That's correct, if the grant recipient resided in a place
- of where the project happened.
- 14 Q. So it's your understanding that it was because the grant
- 15 recipient, Dr. Karron, resided at the location where the
- 16 computers were, that that was the reason that that rent expense
- 17 would not be allowed?
- 18 A. Rather the other way around. The project was housed in the
- 19 recipient, the defendant's apartment. That's something
- 20 somewhat different.
- 21 O. What's the difference?
- 22 A. Well, the difference is there was an established home where
- 23 the grant recipient lived, and you couldn't run -- if you ran
- 24 your -- there was nothing per se running the project out of
- 25 your apartment. It's just that you couldn't take your

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1 apartment as an allowable expense. It's very simple. You

- 2 either could or you couldn't.
- 3 O. What if he moved to one floor down? This is a high-rise
- 4 building, right, on East 33rd Street?
- 5 MR. EVERDELL: Objection.
- 6 THE COURT: Hypothetical question again, Mr.
- 7 Rubinstein, come on.
- 8 Q. Well --
- 9 THE COURT: Let's move it on.
- 10 Q. If you move one flight down to somebody else's apartment --
- 11 MR. EVERDELL: Objection.
- 12 Q. -- would you deduct the expense?
- 13 THE COURT: I think it's the first floor.
- MR. RUBINSTEIN: Pardon?
- 15 THE COURT: I think you told us this apartment was on
- 16 the first floor, so.
- MR. RUBINSTEIN: No, it's on the 4th floor, Judge. If
- 18 I said it was on the first floor, I misspoke.
- 19 THE COURT: Okay.
- 20 MR. RUBINSTEIN: All right.
- 21 THE COURT: All right.
- 22 Q. So it's cetera your view that a rent expense, the only
- 23 reason the rent expense was not allowable was because the
- 24 defendant resided at the location, correct?
- 25 A. Yes, and that was confirmed by Joan Hayes.

- 1 Q. Did you ever hear of the concept, direct and indirect
- 2 expenses related to the grant?
- 3 A. Yes, I think I have in the past. I haven't thought about
- 4 it for some years.
- 5 Q. Well, in the 30 pages that you read --
- 6 A. I didn't.
- 7 Q. -- did you happen to notice anything about indirect
- 8 expenses?
- 9 A. To my recollection right now, no.
- 10 Q. By the way, you also said that you had discussed with Dr.
- 11 Karron the unallowability of utilities, correct?
- 12 A. Correct.
- 13 Q. And, in fact, are you aware of negotiations as to having as
- 14 an expense deductible from NIST for utilities?
- MR. EVERDELL: Objection, your Honor.
- 16 THE COURT: I don't see the relevance. I'm going to
- 17 sustain that.
- 18 Q. Well, were you a recipient of any e-mails related to rent,
- 19 utilities expenses?
- 20 A. There were hundreds of e-mails written in the course of 15
- 21 months. There may have been one related to utilities. I would
- 22 have to see it.
- 23 Q. You were present in the summer of 2002, correct?
- 24 A. I -- my first billable day was July 27th, 2002.
- Q. And were you aware that Dr. Karron had taken a \$75,000

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- 1 payment in October of 2001?
- 2 A. Yes. This was an initial drawdown. The minute the ATP tap
- 3 fund tap was turned on, some ten months before I started
- 4 working on the project.
- 5 Q. And are you aware that in August that there were
- 6 bookkeeping entries made to turn that \$75,000 into salary?
- 7 THE COURT: Objection.
- 8 MR. EVERDELL: Objection.
- 9 THE COURT: Sustained.
- 10 Q. Did you see any records in this, in these Quick Books
- 11 indicating that 75 -- that Dr. Karron was credited as salary in
- 12 August 2nd of 2002 for \$61,000 and change?
- 13 A. I don't remember the exact payments Dr. Karron took as his
- 14 drawdown or his salary or advances on salary, or money that he
- paid himself before the project started.
- 16 Q. But were you aware of a journal entry made in the books on
- 17 September 30th, 2002, attributing 60 -- \$61,000 to Dr. Karron
- 18 as salary and that no check was then issued?
- 19 MR. EVERDELL: Objection.
- 20 THE COURT: Do you have any recollection of that?
- THE WITNESS: No, your Honor, I don't.
- 22 Q. Well, in your --
- 23 THE COURT: Jury is instructed that you're not to take
- 24 into account the questions as being evidence. The questions
- 25 are not evidence. The only evidence comes from the witness.

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1 This witness hasn't testified about those things.

- 2 Q. Well, before --
- 3 THE COURT: Let's --
- 4 THE WITNESS: May I have some more water while
- 5 we're --
- 6 THE COURT: Let's bring it to an end, Mr. Rubinstein.
- 7 MR. RUBINSTEIN: Yes. I'm getting there, Judge.
- 8 THE COURT: And getting there quickly.
- 9 Q. Now, when you were doing this financial work for, for the
- 10 audit, right, you were getting papers for the audit for Joan
- 11 Hayes?
- 12 A. Preparing reports, separating out the NIST allowable from
- the non-NIST allowable, yes.
- 14 Q. Did you find any, in your preparation, any \$75,000 loan
- outstanding that Dr. Karron owed?
- THE COURT: Do you remember?
- 17 THE WITNESS: Your Honor, what I remember is that when
- 18 I worked back in time, since we're talking about ten months
- 19 prior to my starting at ATP, that within the first, literally,
- 20 the first or second day of the start of the project on October
- 21 1st, 2001, Dr. Karron took \$75,000 out of the NIST funds as a
- 22 what bookkeepers or accountants like to call draws. This is in
- fact, pay yourself a lump sum of money.
- 24 THE COURT: Wait. You don't have to give an
- 25 explanation.

- 1 THE WITNESS: Okay.
- 2 Q. In your working with the Quick Books in preparation for the
- audit, did you find that there was a \$75,000 loan outstanding
- 4 that Dr. Karron owed on the ATP project?
- 5 A. The check --
- 6 THE COURT: Do you remember?
- 7 THE WITNESS: All I remember is the check that was
- 8 written out of ATP to the defendant for \$75,000 and, it was
- 9 marked by the defendant himself, since this was ten months
- 10 before I started, as D.K., Dan Karron draw. That was how the
- 11 check was noted.
- 12 Q. And you have no recollection of whether or not that was
- 13 ever repaid?
- 14 THE COURT: He said that was all his memory.
- 15 Q. Well, you did find --
- 16 THE COURT: I'll allow the question, let's go ahead.
- 17 Q. -- as a bookkeeper --
- 18 THE COURT: Do you remember whether that was repaid in
- 19 August 2003? That was the question.
- 20 A. I don't recollect one way or the other, no.
- 21 Q. Wouldn't it be something that you would, as a --
- MR. EVERDELL: Objection.
- 23 Q. -- a bookkeeper something that if it was not repaid, you
- 24 would have to make some kind of note about?
- MR. EVERDELL: Objection.

- 1 THE COURT: Objection sustained.
- Q. Did you know a Mark Stanley?
- 3 A. Mark Stanley?
- 4 O. Yeah.
- 5 A. Oh, no.
- 6 Q. Did you know Marilyn Goldstein?
- 7 A. The name sounds familiar, but I don't recollect anything.
- 8 Q. Hope Snowden?
- 9 A. Hope?
- 10 Q. Yes.
- 11 A. I believe if you're talking about Hope, one of the ATP
- managers, I knew her by name.
- 13 Q. B.J. Lide?
- 14 A. B.J. is another ATP manager.
- 15 Q. You ever speak to any of those people?
- 16 A. I said hello to B.J. two weeks ago, and it was just hello,
- 17 I'm Frank, and she said hi, I'm B.J.
- 18 Q. Here in the courthouse?
- 19 A. No, not in the courthouse, no.
- 20 Q. In the U.S. Attorney's Office?
- 21 A. That's the building next door?
- 22 O. Yes.
- 23 A. Yes. I said, I said hello to her.
- Q. And by the way, the, quote, apartment, were you ever in the
- 25 bedroom of that apartment where CASI was headquartered?

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1 A. Yes, on a couple of occasions. When computers were down,

- 2 the defendant had a computer in that room.
- 3 Q. How --
- 4 A. Once or twice, literally once or twice, probably.
- 5 Q. You worked there three days a weeks, correct?
- 6 A. It would, as I've testified already, it would vary between,
- 7 say, one and three days a week.
- 8 Q. And how many people were generally there working on the
- 9 project when you were there?
- 10 A. Again, that would be -- would change. When Miss Winter was
- 11 around doing the day-to-day okay keeping for the first couple
- 12 of months after I joined, Niki was often there. Jim Cox, one
- of the programmers was often there. And then a gentleman
- 14 called Mat, who appeared to be a bit of a hanger on, I was
- 15 never quite sure what Mat did, and Margaret, another hanger on.
- 16 Q. Margaret did a lot of scanning, right?
- 17 A. I saw her scanning once or twice.
- 18 Q. And how much was Margaret paid a week?
- 19 A. I have absolutely no recollection at this point.
- 20 Q. Now, there came a time that a Bob Benedict was hired,
- 21 correct?
- 22 A. Correct. He is the business manager for fiscal year two.
- MR. EVERDELL: Objection.
- 24 THE COURT: Really, Mr. Rubinstein, this is not --
- 25 this is going way beyond what's necessary for your

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- 1 cross-examination.
- 2 Q. Bob Benedict was the business manager for CASI, correct?
- 3 MR. EVERDELL: Objection.
- 4 THE COURT: He's already testified to that.
- 5 Q. And in fact there came a time when the bookkeeping system
- 6 got moved off-site, right?
- 7 A. That is correct.
- 8 Q. And that's after Bob Benedict came aboard?
- 9 A. That is correct.
- 10 Q. And was it moved to Ken Jackson Group area?
- 11 A. Yes.
- 12 Q. Now, the project was suspended, the grant was suspended,
- was it not, in the latter part of June of 2003?
- MR. EVERDELL: Objection.
- 15 THE COURT: We're all aware of that. He's testified
- 16 to it before. Now let's go ahead.
- 17 Q. Did Dr. Karron advance monies to pay bills after the grant
- was suspended?
- MR. EVERDELL: Objection.
- 20 THE COURT: Objection sustained.
- 21 Q. Are you aware of whether or not Dr. Karron loaned money to
- 22 the NIST project during the time that you were there?
- MR. EVERDELL: Objection.
- 24 A. I am not aware of that.
- 25 O. Pardon?

- 1 A. I am not aware of that.
- Q. Well, let me show you an e-mail that's marked 3507Q?
- 3 THE COURT: What letter?
- 4 THE DEPUTY CLERK: 3507Q?
- 5 MR. RUBINSTEIN: Q.
- 6 THE DEPUTY CLERK: 3507Q.
- 7 Q. I show you this e-mail dated September 3rd, 2002?
- 8 A. Uh-huh.
- 9 Q. From Frank -- from you?
- 10 A. Correct.
- 11 Q. To Dr. Karron?
- 12 A. Right.
- 13 Q. C.c. Hayes?
- 14 THE COURT: What page of this?
- 15 MR. RUBINSTEIN: This is page ten of 51, your Honor.
- 16 THE COURT: This is September 3rd, 2002?
- 17 MR. RUBINSTEIN: Correct.
- 18 Q. And did you, in that e-mail, say that, my biggest concern
- 19 is making sure that everything is kosher on the flow of monies
- 20 that has happened since the inception of NIST project between
- 21 CASI and the NIST sub accounts in CASI and Dr. Karron's
- 22 personal finances. Dr. K, very understandably, and as most
- 23 small business owners needs to operate, has made personal loans
- 24 in various ways to meet his cash flow needs in CASI, NIST, and
- I want to make sure that we take note of every, everything and SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 that it is all clean.
- Do you recall sending that e-mail?
- 3 A. Well, now, I -- that is my writing, yes. This is about
- 4 less than five weeks after I started the project, started
- 5 working on the project.
- 6 Q. And does that refresh your recollection that Dr. Karron
- 7 made loans to this project personal loans?
- 8 A. Subsequent to the writing of that e-mail --
- 9 Q. Does that refresh your recollection?
- 10 A. It doesn't, it doesn't -- it doesn't refresh my
- 11 recollection enough to be specific about whether he actually
- 12 did make loans or not. I was under the impression, looking at
- 13 the data that was in Quick Books and Quicken, that he made
- 14 loans.
- MR. RUBINSTEIN: No further questions.
- 16 THE COURT: Any redirect?
- MR. EVERDELL: No redirect, your Honor.
- 18 THE COURT: No redirect? Thank you. I'm sorry, jury,
- 19 but it saved us one witness.
- 20 MR. RUBINSTEIN: One last question my associate asked
- 21 me to ask.
- THE COURT: Oh, no.
- MR. RUBINSTEIN: One question.
- 24 THE COURT: Jury's excused.
- 25 (Jury exits the courtroom)

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1 THE COURT: Have a good weekend. I hope the weather

- 2 is good, not too hot. See you at 9:30 in the morning, Monday
- 3 morning, not Saturday morning.
- 4 Okay, you're excused.
- 5 THE WITNESS: Thank you.
- 6 THE COURT: Who is the next witness.
- 7 MR. KWOK: The next witness is Bob Benedict.
- 8 MR. EVERDELL: Bob Benedict, your Honor, that is the
- 9 last government witness.
- 10 THE COURT: All right.
- MR. EVERDELL: We believe.
- 12 THE COURT: Okay.
- 13 MR. RUBINSTEIN: I'll have witnesses here Monday and
- 14 be prepared to go, your Honor.
- 15 THE COURT: All right.
- 16 MR. RUBINSTEIN: After I review the Government's
- 17 submission under Rule 29.
- 18 MR. KWOK: When can we expect the witness list from
- 19 defense counsel?
- 20 THE COURT: You're going to have a submission -- what
- 21 about Rule 29?
- 22 MR. RUBINSTEIN: Yeah, your Honor had asked the
- 23 government to submit --
- 24 THE COURT: Yes, I have, on Monday morning.
- 25 MR. RUBINSTEIN: -- a submission.

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- 1 THE COURT: Yeah. But you'll have a witness to go.
- 2 MR. RUBINSTEIN: No, they have --
- 3 THE COURT: We have a -- Rule 29 won't come up until
- 4 after their last witness.
- 5 MR. KWOK: When can we get a witness list from defense
- 6 counsel?
- 7 THE COURT: Oh, yes, your witness --
- 8 MR. RUBINSTEIN: I'll provide it as soon as --
- 9 THE COURT: Mr. Rubinstein.
- 10 MR. RUBINSTEIN: You have the names of three of the
- 11 witnesses, and we had a witness list that was submitted for the
- jurors. A number of them are character witnesses.
- 13 THE COURT: Oh, no. You have a list of people whose
- 14 names might be mentioned during the course of the testimony.
- 15 MR. EVERDELL: What three are you referring to now?
- 16 THE COURT: That's different than the witness list.
- MR. RUBINSTEIN: I don't know. I have to get -- we'll
- 18 e-mail you something, we'll e-mail you something tomorrow.
- 19 MR. EVERDELL: Your Honor, he still hasn't given
- 20 resumes for the experts that he noticed as well.
- 21 THE COURT: We need those resumes for the experts. We
- 22 asked for those. My law clerk asked for those a week ago, I
- 23 believe.
- MR. RUBINSTEIN: We'll, e-mail them to the government.
- 25 He had given them to me three times and I misplaced them.

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1 MR. EVERDELL: If your Honor if he plans to call an

- 2 expert on Monday, I --
- 3 THE COURT: What?
- 4 MR. EVERDELL: We still don't have the resumes. I
- 5 mean there is no way we can -- we still stand on our objection
- 6 to these experts. We haven't had proper notice and --
- 7 THE COURT: I want to know the name of the witnesses
- 8 for Monday and Tuesday right now.
- 9 MR. RUBINSTEIN: I have Mason, we'll have --
- 10 THE COURT: Who?
- MR. RUBINSTEIN: John Mason.
- MR. EVERDELL: Who is John Mason?
- THE COURT: Who is John mason?
- 14 MR. RUBINSTEIN: Am I required to give them --
- THE COURT: Well, is it --
- MR. RUBINSTEIN: -- information?
- 17 THE COURT: He's not one of the experts.
- 18 MR. RUBINSTEIN: No, he's not an expert.
- 19 THE COURT: All right.
- 20 MR. RUBINSTEIN: Bill, William Nicoli, who is a real
- 21 estate --
- MR. EVERDELL: He's one of the experts.
- 23 MR. RUBINSTEIN: He's one of the experts.
- MR. EVERDELL: We don't have his resume.
- 25 THE COURT: You have to have the resume or I'm not

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- 1 going to allow him.
- 2 MR. RUBINSTEIN: I will get it to --
- 3 THE COURT: The government's going to have to get it
- 4 within the next half-hour to one hour.
- 5 MR. RUBINSTEIN: It's on all --
- 6 THE COURT: I'm sorry, we're not going to allow you to
- 7 do this. You've had --
- 8 MR. RUBINSTEIN: We'll give it to you now.
- 9 THE COURT: My law clerk called you on Friday a week
- 10 ago for those to be submitted to us and to the government.
- 11 MR. RUBINSTEIN: I know, and they dumped all this 3500
- 12 material on me, Judge, and I've been working seven days a week
- and I'm doing the best I can, I'm sorry. And if you want to
- 14 preclude me -- we'll give you Nicoli's resume --
- THE COURT: You've got assistants.
- MR. RUBINSTEIN: -- now.
- 17 THE COURT: All right. You've got it on computer
- 18 evidently.
- MR. RUBINSTEIN: It's not --
- 20 THE COURT: Doctor has his computer here, Dr. Karron.
- 21 Punch it out for all of them.
- 22 MR. EVERDELL: Your Honor, separate and part from the
- 23 resume issues, we still have a relevance objection to a lot of
- 24 these experts. It's just not relevant to the --
- 25 THE COURT: I know, but I think we should have a

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1 resume. And, in any event, you don't know how I'm going to

- 2 hold.
- 3 MR. EVERDELL: That's true, your Honor.
- 4 MR. KWOK: If I may, while the defense is working on
- 5 the resume, I believe they also raised the issue of quashing
- 6 the subpoena we issued if as when, the subpoena we issued to
- 7 the defendant in case he testifies. We still haven't got any
- 8 submission from them on the grounds that they would like to
- 9 quash a subpoena. I believe your Honor requested further
- 10 briefing from defense counsel because the case they cited to
- 11 your Honor was not on point, the case by Judge Jones.
- 12 THE COURT: I've forgotten which --
- 13 MR. KWOK: I believe they cited the Weissman case,
- 14 your Honor, and your Honor read the case on the bench and was
- 15 of the view that because that concerned a third party subpoena
- 16 it was not on point, and requested further briefing from
- defense counsel. We haven't gotten anything at this point.
- 18 THE COURT: I've forgotten what happened. I remember
- 19 the Judge Jones case did that, but I've forgotten the issue it
- 20 was raised.
- 21 MR. KWOK: The issue, I believe that they raised, was
- 22 that 17C trial subpoena could not be issued for impeachment
- 23 purposes, but the holding of that case is much different
- 24 because there it was issued to a third party not testifying.
- 25 THE COURT: Yes. And nothing further having been SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 submitted by the defense --
- 2 MR. RUBINSTEIN: We're getting --
- 3 THE COURT: And since nothing further has been
- 4 submitted by the defense, it's seems to me that the subpoena
- 5 has to be complied with.
- 6 MR. RUBINSTEIN: Well, when we make a decision if
- 7 we're going to call him, I don't think we have to comply with
- 8 it before we make that final decision.
- 9 MR. KWOK: The subpoena asks for two days in advance
- 10 of testimony.
- 11 THE COURT: If you're going to call him, you have to
- 12 submit the material in advance so they can be prepared for the
- 13 cross-examination, if you're going to call him. If you're not
- 14 going to call him, that's another matter, or if he doesn't want
- 15 to be called, it's up to the two of you. It's actually his
- 16 decision. So what's it going to be?
- 17 MR. RUBINSTEIN: We have the exhibits here, somewhere,
- 18 Judge. It might be in the back, Judge.
- 19 (Recess)
- 20 MR. RUBINSTEIN: I turned over documents for you,
- Judge.
- 22 MR. KWOK: It's not all of the materials requested,
- however.
- THE COURT: What's missing?
- MR. KWOK: On the trial subpoena --

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- 1 THE COURT: What?
- 2 MR. KWOK: Yeah, in the subpoena we requested the
- 3 federal and state tax returns and/or tax filings relating to
- 4 the tax year 2001 through 2003, and second item is any and all
- 5 documents showing sources of income for the years 2001 through
- 6 2003, including but not limited to W-2 forms, interest income
- 7 statements and investment income statements; third item is bank
- 8 account statements pertaining to personal bank accounts at
- 9 banks other than Chase Bank for the years 2001 through 2003;
- 10 fourth item is proof of payment and any, any and all documents
- 11 showing sources of payment for rent and/or mortgage, medical
- 12 expenses, home renovation expenses, home cleaning expenses, and
- any and all bills and/or invoices exceeding \$2,000, for the
- 14 years 2001 through 2000.
- 15 THE COURT: What about maintenance, maintenance,
- 16 maintenance bills?
- 17 MR. KWOK: Home cleaning expenses, renovation
- 18 expenses.
- 19 THE COURT: I don't mean that kind of maintenance.
- 20 MR. RUBINSTEIN: Your Honor, they have everything from
- 21 Spitz. Spitz turned over all financial disclosure. He has no
- 22 other accounts other than Chase. They have all his records,
- 23 and.
- 24 THE COURT: What about his rent and maintenance bills?
- 25 MR. RUBINSTEIN: Rent and maintenance bills.

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1 THE COURT: Were those turned over?

- 2 MR. RUBINSTEIN: They have every, every check he
- 3 ever --
- 4 THE COURT: Those aren't your personal --
- 5 MR. RUBINSTEIN: They have all of that, that's what
- 6 they have in their box.
- 7 THE COURT: Do you --
- 8 MR. KWOK: If that's what they represent that we have
- 9 all the checks, we are fine with that. I just want them to not
- 10 say that there are some other checks he wrote rent checks from
- 11 that are not available to the government that shows that he
- 12 used some other funds to pay for his rent. But if they want to
- 13 represent that our records are representative of the entirety
- of the situation, we are satisfied with that.
- 15 THE COURT: Is that the case then?
- 16 MR. RUBINSTEIN: I understand that Dr. Karron gave
- 17 everything to Joan Hayes and Joan Hayes has cooperated with the
- 18 government throughout, and they have all of his documents. If
- 19 they can point to a document that they are missing, we will
- 20 attempt to find, find it in our system, and maybe duplicate it,
- 21 but they have everything, they seized everything. What they
- 22 didn't seize, Hayes gave them.
- 23 THE COURT: Wait a minute. The question is they've
- 24 asked for the personal bank records, which I gathered both
- 25 sides agreed they have because there are no other bank records

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1 than the bank record for the account at Chase Manhattan, is

- 2 that where it is?
- 3 MR. RUBINSTEIN: That's correct, your Honor.
- 4 MR. KWOK: I believe they referred during the course
- of this trial to Master Card of which we are unaware, so if
- 6 there are Master Card records --
- 7 MR. RUBINSTEIN: I'll gladly give you the Master Card
- 8 records. Do we have them here? Where are they? Gladly give
- 9 them. Maybe they'll dismiss the indictment after they see the
- 10 Master Card records.
- 11 I'll give, I'll give them all of these and they could
- 12 drop them -- I'll pick them back up on Sunday at their office.
- 13 MR. KWOK: And the last two items are first, proof of
- 14 residency, temporary and/or permanent from 2001 through 2003
- 15 including but not limited to personal identification documents;
- 16 for example, driver's license, tax documents, mailing address
- 17 labels, magazines, subscriptions bills and/or labels telephone
- 18 bills and utility bills. And the last item is diaries,
- 19 calendar planners or appointment books relating years 2001
- 20 through 2003.
- 21 MR. RUBINSTEIN: You know what, Judge, they seized
- 22 everything the man had, all his computers as you well know from
- 23 your trial. Everything was scanned in, they have a disk that
- they paid \$30,000 for. They have all the records, period. And
- 25 I think this is outrageous okay.

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- 1 THE COURT: I don't know whether --
- 2 MR. RUBINSTEIN: Waste of time.
- 3 THE COURT: Or not -- all I'm doing is I know what the
- 4 subpoena called for and if they had them, it seemed to me it
- 5 should be in some kind of motion to quash with the statements
- 6 that you've made.
- 7 MR. RUBINSTEIN: I made motion to quash before, but
- 8 they have --
- 9 THE COURT: No, contains the statements.
- 10 MR. RUBINSTEIN: -- all the documents from all the
- 11 computers. They know he doesn't have any paper because they
- 12 know that he scanned everything, and all the testimony and all
- 13 their witnesses have said that he scans it and destroys the
- 14 original.
- 15 MR. KWOK: Well --
- 16 MR. RUBINSTEIN: So I don't know what their problem
- is, Judge, but I don't think it should be your problem, it
- 18 shouldn't be my problem.
- 19 MR. KWOK: The problem, your Honor, is that when we
- 20 agreed to essentially pay for the defense discovery cost, we
- 21 made it very clear that we do not intend to go through any of
- 22 those documents. And subsequent to that, we agreed to let
- 23 defendant copy all the data on those computers. And so it is
- in their possession now, which they can review. The government
- 25 has never agreed to review any of the documents in those

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- 1 computers, because we can't simply review 60 percent of the
- 2 total holdings of the Library of Congress without knowing where
- 3 the stuff is. So if they decide to call the defendant on the
- 4 stand, we expect these documents to be produced. If they're
- 5 not, I expect that the government will be allowed to
- 6 cross-examine the defendant, including why these records are
- 7 not forthcoming.
- 8 MR. RUBINSTEIN: What records are they claiming, what
- 9 are they claiming is missing?
- 10 MR. KWOK: For example, if the defendant were --
- 11 THE COURT: They're just asking for those things that
- 12 are in the subpoena to be retrieved.
- MR. RUBINSTEIN: Well --
- 14 THE COURT: From your computer system or whatever
- 15 from.
- 16 MR. RUBINSTEIN: Give us a list, we'll do what we can.
- 17 THE COURT: The list is in the subpoena. All they're
- 18 asking for is the subpoena?
- 19 MR. RUBINSTEIN: I don't have the subpoena. It's in
- the box somewhere.
- 21 MR. KWOK: I'll give it to you right now.
- 22 (Handing)
- 23 THE COURT: All right, the record will reflect the
- 24 subpoenas' been handed over.
- 25 MR. RUBINSTEIN: We have no diaries, calendars.

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1	THE COURT: There may be some place on that computer
2	that's got
3	MR. RUBINSTEIN: They didn't ask for that, Judge. All
4	I have to do is what's on the subpoena. There's no diaries,
5	calendar, planners, appointment books, related for that period.
6	Proof of residency? I don't understand that at all,
7	Judge, how do you prove your residency? They want his driver's
8	license. They know he lives there. I mean they seized the
9	documents, everything from him in 2006.
LO	THE COURT: It says both temporary and permanent.
L1	MR. KWOK: Permanent
12	MR. RUBINSTEIN: I move to quash that as ridiculous.
13	THE COURT: Well, there's
L4	MR. RUBINSTEIN: Is there any dispute that he lives
15	(Continued on next page)
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- 1 THE COURT: Excuse me. I looked through the records,
- 2 some during the course of the trial, and there is some
- 3 indication that the defendant may have lived in Connecticut for
- 4 a while during this period.
- 5 MR. RUBINSTEIN: And what is the relevancy of that?
- 6 THE COURT: What?
- 7 MR. RUBINSTEIN: What the relevancy of it?
- 8 THE COURT: It is charged to the --
- 9 MR. RUBINSTEIN: No expenses from Connecticut were
- 10 charged.
- 11 THE COURT: They were charged -- they were contained
- in the records. Whether they were charged or not, I don't
- 13 know.
- 14 MR. RUBINSTEIN: Nothing was contained in the records
- 15 about Connecticut. They said that --
- 16 THE COURT: There is something about Connecticut in
- 17 those records. There is at least three months of rent or
- 18 something of that sort.
- 19 MR. KWOK: That's correct, your Honor. I think the
- 20 argument will be that defendant actually told the NIST people
- 21 that he lived in Connecticut as a basis for claiming rent in
- 22 his New York apartment, to show that he doesn't live there, and
- 23 so it's actually office expense. So, to rebut that argument,
- 24 if he does in fact live in Connecticut, we want that document.
- MR. RUBINSTEIN: I'm not going to argue that he lived SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 in Connecticut and therefore rent, which is an indirect cost,
- 2 is deductible. It's irrelevant where he lived.
- 3 THE COURT: Mr. Kwok is anticipating a different
- 4 argument from the defendant, that in fact his main residence
- 5 was in Connecticut and this was just a temporary residence.
- 6 MR. RUBINSTEIN: What relevance is that? We're not
- 7 going to argue.
- 8 THE COURT: And therefore he should be entitled to
- 9 rent.
- 10 MR. RUBINSTEIN: We're not going to raise that
- 11 argument. We don't intend to use that argument, because rent
- 12 is classically an indirect cost of the grant. It's irrelevant
- 13 where he lived, and it wouldn't matter if he lived in Timbuktu.
- 14 THE COURT: No one knows what people will argue.
- 15 MR. RUBINSTEIN: Judge, I am telling you now, I'm
- 16 making a representation as an officer of the court that I have
- 17 no intention on raising an argument that he lived anyplace
- 18 other than where he is currently living.
- 19 The court reporter is here, Judge.
- 20 THE COURT: All right. Is that satisfactory, Mr.
- 21 Kwok?
- 22 MR. KWOK: It is not. I direct the court's attention
- 23 to Exhibit 70, page 18. That's the defendant's rebuttal to the
- 24 audit report.
- MR. RUBINSTEIN: I am not raising it. It's not mine.

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- 1 It's not mine. It was made by Spitz.
- 2 MR. KWOK: This document was submitted by the
- 3 defendant.
- 4 MR. RUBINSTEIN: No, it was put in evidence by the
- 5 government.
- 6 MR. KWOK: On the cover page it says prepared by Dr.
- 7 D.B. Karron with the assistance from others.
- 8 THE COURT: That's my recollection, but I don't have
- 9 it in front of me.
- 10 MR. RUBINSTEIN: Your Honor, I have the résumés of
- 11 three character witnesses that I am submitting -- I mean three
- 12 expert witnesses that I am submitting to the court.
- 13 THE COURT: It's more important that the government
- 14 get it. This isn't defendant's property.
- MR. RUBINSTEIN: Pardon?
- 16 THE COURT: It's a different address, I gather, on the
- 17 front page.
- MR. RUBINSTEIN: What, Judge?
- 19 THE COURT: I think you've got to have something
- 20 better than that.
- 21 MR. RUBINSTEIN: Why? It says what he did. It gives
- 22 you --
- 23 MR. KWOK: We don't have a summary of his testimony.
- THE COURT: What?
- MR. RUBINSTEIN: The summary is that he sold the

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- apartment for \$510,000 and he is a real estate broker.
- THE COURT: What relevance is that?
- 3 MR. RUBINSTEIN: The relevance is that the apartment
- 4 was worth \$700,000 before all of these changes.
- 5 MR. KWOK: And what is the relevance of that, your
- 6 Honor?
- 7 MR. RUBINSTEIN: That the government claims that he
- 8 made structural improvements.
- 9 THE COURT: Oh, come on.
- 10 MR. EVERDELL: It's whether or not they were in the
- 11 budget. It has nothing to do with what he sold his house for
- 12 later.
- 13 THE COURT: Have you got his proposed testimony in sum
- 14 and substance? Have they got that?
- MR. RUBINSTEIN: Yeah.
- 16 THE COURT: And have they got a résumé of his
- 17 employment where he has been?
- MR. RUBINSTEIN: He says he spent the last 20 years
- 19 working in sales and marketing, executive position with major
- 20 corporations before joining Halstead Properties.
- 21 THE COURT: That is not a résumé for purposes of an
- 22 expert witness.
- 23 MR. RUBINSTEIN: Judge, 20 years he is at the same
- 24 place, real estate.
- 25 THE COURT: That's not a résumé. You won't be able to SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 get the testimony in. You've got to say where he was employed,
- 2 etc.
- 3 MR. RUBINSTEIN: It says here the last 20 years he
- 4 worked for one employer in real estate. What more does he have
- 5 to say?
- 6 THE COURT: It doesn't say that.
- 7 MR. RUBINSTEIN: It sure does.
- 8 THE COURT: It says -- before joining in '88, all
- 9 right.
- 10 MR. RUBINSTEIN: Passed the real estate board, brokers
- 11 board. He says where he worked before. It gives his
- 12 background, his organizations, his education.
- 13 THE COURT: It doesn't give his expertise.
- 14 MR. RUBINSTEIN: It says he is a licensed broker for
- 15 over 20 years.
- 16 THE COURT: Brokers are not appraisers.
- 17 MR. RUBINSTEIN: Pardon?
- 18 THE COURT: Brokers are not appraisers, if that's what
- 19 you're putting it in for. So you need to know what his
- 20 testimony is going to be.
- 21 MR. RUBINSTEIN: I'm telling you what his testimony
- is, Judge. He listed the property. Not only that he also
- 23 lives in the building. He knows that other apartments similar,
- what they were sold for in the building, \$700,000, and that
- this apartment sold for \$510,000 because of the condition it

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- 1 was in.
- 2 MR. KWOK: Your Honor, I frankly don't see the
- 3 relevance of that. The question is how the defendant spent the
- 4 grant money, not how the market values whatever renovation he
- 5 decided to make to suit his needs.
- 6 MR. RUBINSTEIN: He didn't make it to suit his needs.
- 7 He made it to suit -- that's exactly the point. He made it to
- 8 suit the needs of ATP, not his needs. And we should be able to
- 9 prove that.
- 10 THE COURT: What about this prior grant that he had?
- 11 MR. RUBINSTEIN: The DABRA contract ended in 1999.
- 12 THE COURT: What was it?
- 13 MR. RUBINSTEIN: It was a contract he had to develop
- 14 things for, advanced research project.
- 15 THE COURT: And what equipment was used for that?
- 16 MR. RUBINSTEIN: The equipment that he bought. And
- 17 that's the equipment that he wanted cofunding costs from. But
- 18 the experts have no testimony on that. That's not what we're
- 19 talking about.
- 20 THE COURT: I was just wondering about it because it
- 21 seemed to me on the validity of the argument that rent was
- 22 not -- or should or should not be an appropriate charge.
- 23 MR. EVERDELL: I don't think his testimony has
- 24 anything to do with that. It doesn't sound like his testimony
- 25 has anything to do with that issue.

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- 1 THE COURT: No, I'm talking about DABRA.
- 2 MR. RUBINSTEIN: CASI paid Dr. Karron rent for CASI.
- 3 They made money. They had a contract with DABRA which happened
- 4 to be a federal contract, and the corporation paid him rent
- 5 that he reported on his tax returns, and that's the way he ran
- 6 his business.
- 7 Can I get home to my wife, please?
- 8 THE COURT: What else do we have? You need the name
- 9 of the witnesses.
- 10 MR. RUBINSTEIN: I gave it to them. I gave them all
- 11 of the experts.
- 12 THE COURT: You just told us the name of the expert.
- 13 MR. RUBINSTEIN: I also gave them Mason.
- 14 THE COURT: Mason will be called. I don't know how
- 15 long he will take, but I can't see it being very long. Who
- 16 else do we have?
- MR. RUBINSTEIN: We have some character witnesses,
- 18 Judge. I will give you the names in a second.
- 19 THE COURT: But give them the names of the witnesses
- who will be called on Monday and Tuesday.
- 21 MR. RUBINSTEIN: I am going to try to get them all
- 22 here on Monday and wait until Tuesday if I need them on
- 23 Tuesday. The character witnesses are Ted Coons, Theodore
- 24 Coons. Professor at NYU. Doctor Michael Treat is an MD.
- 25 Possibly Jim Cox, your Honor.

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- 1 THE COURT: That will be a fact witness? As a fact
- 2 witness?
- 3 MR. RUBINSTEIN: Jim Cox? Yeah, he worked at CASI.
- 4 THE COURT: I just want to make sure I understood.
- 5 MR. RUBINSTEIN: I don't see us going beyond Wednesday
- 6 morning. I don't even know if we will finish the day on
- 7 Tuesday, except of course if the defendant testifies, and I
- 8 would assume we would probably anticipate finishing up sometime
- 9 on Wednesday, which is less than was anticipated. And also Mel
- 10 Spitz, your Honor, the accountant. I haven't made a decision.
- 11 I'm leaning towards not calling him.
- 12 THE COURT: Who?
- 13 MR. RUBINSTEIN: Mel Spitz, the accountant, the CPA.
- 14 The government is well aware of him. He is the one they dealt
- 15 with during the audit.
- THE COURT: OK. Does that help?
- 17 MR. KWOK: It's all the information we have at this
- 18 point. We still stand on our objections on the expert
- 19 witnesses on grounds --
- 20 THE COURT: I don't think they're calling them.
- 21 MR. RUBINSTEIN: Yes, I submitted their résumé to you,
- 22 your Honor. They're with the exhibit.
- 23 THE COURT: Oh, you are going to call them. But they
- 24 will be very short witnesses?
- MR. RUBINSTEIN: Sapin and LeClaire, yes.

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1	MR. KWOK: And we still object on relevance grounds,
2	on lateness of the notice, and the inadequacy of the notice.
3	THE COURT: All right. Well, I don't know whether
4	I've got all the submission on the relevance grounds, but
5	MR. KWOK: We submitted a letter to the court when we
6	first heard about these witnesses.
7	THE COURT: You're standing on that letter.
8	MR. KWOK: That's correct, your Honor.
9	THE COURT: OK.
10	(Trial adjourned to June 9, 2008 at 9:15 a.m.)
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1	UNITED STATES DISTRICT COURT	
1	SOUTHERN DISTRICT OF NEW YORK	
2	x	
2		
3	UNITED STATES OF AMERICA,	New York, N.Y.
3		
4	v.	S2 07 CR 541 (RPP)
4		
5	DANIEL B. KARRON,	
5		
6	Defendant.	
6		
7	x	
7		
8		
8		June 9, 2008
9		9:40 a.m.
9		
10		
10	Before:	
11		
11	HON. ROBERT P. PATTERS	ON, JR.,
12		
12		District Judge
13		
13		
14	APPEARANCES	

15	MICHA	AEL J. GARCIA
15		United States Attorney for the
16		Southern District of New York
16	BY:	STEVEN KWOK
17		CHRISTIAN EVERDELL
17		Assistant United States Attorneys
18		
18	RUBI	NSTEIN & COROZZO, LLP
19		Attorneys for Defendant
19	BY:	RONALD RUBINSTEIN
20		
20	Also	Present: Rachel Ondrik, U.S. Dept. of Commerce
21		Kirk Yamatani, U.S. Dept. of Commerce
22		
23		
24		
25		
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- 1 (In open court; jury not present)
- THE COURT: Well, I've gotten the Government's letter
- 3 of June 9th, and it appears to agree with the Court, that the
- 4 government must prove misapplication of the grant funds and not
- 5 just misapplication of CASI money.
- 6 MR. EVERDELL: Your Honor, I think in this case the
- 7 issue is somewhat mooted, because the only funds that CASI had
- 8 were ATP funds. I don't --
- 9 THE COURT: That's --
- 10 MR. EVERDELL: I think the --
- 11 THE COURT: That's, I think, for the small amount that
- 12 was for refunds.
- 13 MR. EVERDELL: Right. There are a couple of things
- 14 that factor into this, right. There are the refund checks in
- 15 the first year, which really don't count so much, and then in
- 16 the second year there were, I think Ms. Riley testified about
- 17 \$1500 worth of some other funds that came in, but everything
- 18 else is ATP. And as the letter makes clear, Ms. Riley did take
- into account the \$37,000, quote unquote, emergency loans that
- 20 the defendant gave to the company, because he pulled out much
- 21 more than that, that offset. So really we're dealing with ATP
- 22 funds alone.
- 23 I think the law is clear that you don't actually need
- 24 to trace the funds to the actual purchases, so that if they
- 25 were commingled with actual separate CASI funds, we could still

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- 1 prove that he spent -- improperly spent CASI money. However,
- 2 in this case, because all the funds are ATP funds, it doesn't
- 3 really raise an issue.
- 4 THE COURT: Well, the way I read the statute and go
- 5 back to the statute, it is a little inconsistent from the
- 6 Government's request to charge. As I read the statute, the
- 7 "without authority" phrase, I guess I should say, applies to
- 8 the misapplication of funds, as well as the conversion of
- 9 funds. That's not reflected in the request to charge.
- 10 MR. EVERDELL: I see, your Honor.
- 11 THE COURT: And I think it should be. There's no
- 12 comma. Do you follow me?
- 13 MR. EVERDELL: Yes, I see where you're looking, your
- 14 Honor. I didn't see any particular case law addressing that
- 15 issue.
- 16 THE COURT: Well, after reading your, what is it,
- 17 Tenth Circuit case --
- 18 MR. EVERDELL: Frazier.
- 19 THE COURT: -- and reflecting on it, it seemed to me
- 20 that's the way the statute should be read, and I intend to make
- 21 the request to charge reflect that.
- 22 MR. EVERDELL: So if I could just be clear, do you
- 23 have an idea of how the charge would read at this point?
- 24 THE COURT: Well, it incorporates the without
- 25 authority. I think I drafted something over the weekend. I

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1 put it into the third element so that the third element begins

- that, the government must prove, beyond a reasonable doubt,
- 3 that the defendant without authority intentionally misapplied
- 4 money or property. In this case, to intentionally misapply
- 5 money or property means to intentionally apply money or
- 6 property, subject to the terms and conditions of the grant in
- 7 an unauthorized manner.
- 8 MR. EVERDELL: I mean I in -- we will consider any
- 9 possible objections, but I think at the moment that I don't
- 10 think we would have any objection to that, but we'll consider
- it and if there's anything we want to raise --
- 12 THE COURT: That's what I -- that's the way I -- then
- 13 it goes on.
- MR. EVERDELL: Okay.
- 15 THE COURT: And then it goes onto incorporate the
- 16 defendant's request that the misapplication of money or
- 17 property, however, does not apply to bona fide as a salary
- 18 wages fringe benefits and other compensation paid and expenses
- 19 paid or reimbursed in the usual course of business. Because
- that's right in the statute.
- MR. EVERDELL: Right, that's in the 660.
- 22 THE COURT: Now, I don't know whether -- I haven't
- 23 heard anything from Mr. Rubinstein.
- MR. RUBINSTEIN: Judge, I don't know how the
- 25 government could --

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- 1 THE COURT: I'm sorry, sir?
- 2 MR. RUBINSTEIN: I don't know how the government could
- 3 legitimately argue that there were no contributions by Dr.
- 4 Karron.
- 5 THE COURT: There is no what?
- 6 MR. RUBINSTEIN: There were no contributions by Dr.
- 7 Karron. Their entire case was predicated upon two concepts, as
- 8 far as I can understand, to for criminality. Unless your
- 9 Honor's only talking about the request to charge issue.
- 10 THE COURT: I'm really just talking about the, trying
- 11 to be sure that whatever case goes to the jury is framed as I
- 12 understand the statute. And as I understand the statute, that
- 13 with authority applies both to conversion of funds and
- 14 misapplication of funds and, therefore, it seems to me the
- issue of authority to use the funds.
- 16 Now, you say you maintain that the funds were not all
- 17 the government funds and that Dr. Karron made contributions in
- 18 the forms of loans to the corporation, as I understand your
- 19 position.
- 20 MR. RUBINSTEIN: That's correct, Judge. The rest
- 21 of -- I think goes to -- I don't have any objection at this
- 22 point. I'll reflect further on it as your Honor's view of
- 23 without authority provision of the statute.
- 24 My view of the evidence, though, is that the
- 25 Government's tried this case, and in their opening indicated

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- 1 that, for lack of a better word, the defendant cooked the
- 2 books, so he had a criminal intent and --
- 3 THE COURT: They have to show intent.
- 4 MR. RUBINSTEIN: And they haven't. They woefully
- 5 failed to do that, number one. And the second provision that
- 6 they argued was that the defendant didn't contribute any funds.
- 7 THE COURT: Excuse me?
- 8 MR. RUBINSTEIN: That the defendant contributed no
- 9 funds, and they're still beating the same drum here. But the
- 10 evidence, P-1 through P-6 disproves that; over \$30,000 in the
- 11 first year of the grant that was given to CASI, and they
- 12 haven't traced -- well, I'm not going to give them any more
- arguments, frankly, because I'll save that for summation if I
- 14 have to go that far.
- 15 So that's the view, whether or not they've established
- 16 their case is, would be for your Honor to understand,
- obviously, in the first instance.
- 18 MR. EVERDELL: Your Honor, if I could just make a
- 19 few --
- 20 THE COURT: Well, the jury's got to make that
- 21 determination, not me. I think --
- 22 MR. RUBINSTEIN: Well, under Rule 29 it's up to you,
- Judge.
- 24 THE COURT: No, I've got to determine under Rule 29
- 25 that the jury could not reach the Government's -- conclude as

- 1 the government argues as a --
- 2 MR. EVERDELL: Your Honor, just to respond briefly to
- 3 what was just said. I mean, I think the word trace just
- 4 betrayed something that's happening in Mr. Rubinstein's mind.
- 5 There is no tracing requirement.
- And with respect to the \$37,000 that he's referring
- 7 to, Ms. Riley's analysis took those checks into account.
- 8 They're on her spread sheet, government exhibits 110. The fact
- 9 is, the defendant withdrew almost \$130,000 in loans and then he
- 10 paid back possibly \$37,000. She treated them as loan
- 11 repayments, such that it netted out to no additional funds in
- 12 the, in the pool. So that's taken into account in her
- 13 analysis. And it doesn't mean we don't -- there is no tracing
- 14 requirement to show that, you know, let's assume for a moment
- if we treated the \$37,000 as a separate pool of money, the
- 16 government doesn't need to show that everything that we allege
- 17 was improperly bought, came from money that was separate from
- that \$37,000. It all went into the same pool. There is no
- 19 tracing requirement. And because of the fact that he took out
- 20 so much money, it doesn't even matter, because it nets out to
- 21 zero. So we really are talking about all ATP funds here. But
- 22 even so, even if we were to consider the \$37,000 Mr. Rubinstein
- is talking about, as a separate source of funds, it wouldn't
- 24 matter. I mean even on the rent alone, as the government
- 25 points out in its letter, that's over \$60,000. So we're still SOUTHERN DISTRICT REPORTERS, P.C.

- 1 talking about \$23,000 that had to have come from ATP funds, and
- that's well over the \$5,000 limit.
- 3 So this issue of not contributing funds is really not
- 4 a resident point for the defendant. The government has shown
- 5 that the funds that were at issue here were ATP funds, and that
- 6 there really weren't any other sources of funding for CASI at
- 7 the time this grant was going on. It was all ATP funds. And
- 8 we did take into account the \$37,000 that he's talking about.
- 9 And as for intent, it is not just that he cooked the
- 10 books. We said in our opening, even, that he willfully
- 11 disregarded what many people around him, CASI officials, his
- 12 own employees kept telling him that he couldn't use funds to
- 13 pay for X, Y and Z, rent and utilities in particular. That's
- 14 just one example. And he disregarded them. He willfully
- 15 disregarded everything that was being told to him. And that
- 16 that kind of avoidance, that kind of conscious ignorance of
- 17 what everybody had told him to do is enough for intent to
- 18 establish intent in this case. He willfully misapplied those
- 19 funds, despite what everybody, including Hope Snowden, the one
- 20 person who could approve the funds for him, told him, which was
- 21 no, you can't do that.
- 22 So that's enough for intent, your Honor. We believe
- 23 that this case is amply sufficient to go to the jury on both of
- those counts.
- THE COURT: I thought your position was that he had SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 been originally told he couldn't pay it for rent or utilities
- 2 right at the kickoff meeting.
- 3 MR. EVERDELL: Right from the beginning. And he had
- 4 several conversations even before the kickoff meeting and after
- 5 the kickoff meeting, he and Gurfein with Hope Snowden, and with
- 6 B.J. Lide, both of whom said no, you can't do it. No matter
- 7 how he framed the issue, he was told repeatedly, no. And he
- 8 was never told yes on any of those things, and yet he went
- 9 ahead and started paying rent to himself for CASI's use of his
- 10 office space, despite the fact that every everybody around him
- 11 had told him no, including the very officials that he would
- 12 need to get approval for such costs. So his insistence that he
- 13 was right and that he would get these things approved, doesn't
- 14 absolve him of criminal intent. That's just willful blindness
- on the part of the defendant. Thank you, your Honor.
- 16 THE COURT: All right. The part that's not clear to
- 17 me is the reduction of the salary and the, and any repayment of
- 18 loans that was arranged by reduction in salary.
- 19 MR. EVERDELL: Well, your Honor, I think if you look
- 20 at the analysis and spread sheet.
- 21 THE COURT: Or waiving the right to obtain salary.
- 22 MR. EVERDELL: Well, okay. He did end up paying
- 23 himself I think \$35,000 in, quote unquote, salary, right. But
- 24 if you take -- if you add that to the loans, which total almost
- 25 \$130,000, plus the rent that he paid himself is \$60,000, he's

- 1 getting an enormous amount of money over his salary.
- 2 THE COURT: I'm not asking you to --
- 3 MR. EVERDELL: Yeah.
- 4 THE COURT: -- explain it now, but I'm just saying
- 5 that's not clear to me.
- 6 MR. EVERDELL: Okay.
- 7 THE COURT: We've been told that jurors are going to
- 8 be late because of subway problem. How do we, stand Robert?
- 9 THE DEPUTY CLERK: Miss Reyes is here, Miss Ippolito
- 10 is not. She's not here yet. She's the alternate juror.
- 11 THE COURT: Well, counsel, we have all the jurors
- 12 except Ms. Ippolito, who is the alternate juror number --
- 13 THE DEPUTY CLERK: She was alternate juror number
- 14 four, now she's alternate juror number three.
- 15 THE COURT: She thought she might be here by 10:15.
- 16 Do you think we should wait for her or you think we should go
- 17 ahead?
- 18 MR. RUBINSTEIN: I think we should wait for her.
- 19 She's called a long time ago that she had this problem. She
- 20 spent --
- 21 THE COURT: She did call a long time ago, she is
- 22 alternate three. All right, you both agree?
- 23 MR. EVERDELL: Your Honor, I think we may -- we
- 24 probably should wait also because I still don't know how long
- defense counsel's case is going to take, and I know we lose the

- 1 first juror at the end of the week, so we're running low of
- 2 alternates.
- 3 THE COURT: Let me go to -- let me ask the government
- 4 a question.
- 5 In Mr. Rubinstein's letter about calling the real
- 6 estate expert, he stated that the government was going to make
- 7 an argument -- I don't have the letter in front of me. Does
- 8 anyone have the letter? Does anyone have that letter? Let me
- 9 see. We seem to have it -- stated that the government was
- 10 going to make an argument that he made personal improvements to
- 11 his apartment for his own benefit and to enhance the value of
- 12 the apartment. I'm not sure the government is going to make
- 13 that argument at all.
- 14 MR. KWOK: That's correct, your Honor. I guess
- 15 especially the latter part, we're not intending to argue that
- 16 it enhanced the value of his apartment. All we are saying is
- 17 that he did make some renovations to his apartment, whatever
- 18 the market value of that improvement, quote unquote,
- 19 improvements might be, but that he did it unlawfully using
- 20 grant funds. It doesn't depend on how the market value, quote,
- 21 renovations that he's --
- 22 THE COURT: As I understand it, you're not claiming he
- 23 made the improvements to enhance the value of the apartment or
- for his own personal benefit, but rather that he was not
- 25 allowed to, under the terms of the grant, to make those

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- 1 improvements.
- MR. KWOK: That's exactly right, your Honor.
- 3 THE COURT: So if that's the case, if they're not
- 4 going to argue that, as you say, Mr. Rubinstein, I don't see
- 5 how the real estate expert's testimony is relevant.
- 6 MR. RUBINSTEIN: Well, your Honor, first of all, the
- 7 jury could -- whether I argue it or not, the jury could
- 8 consider it. Because they're talking about -- they brought out
- 9 construction, quote, improvements, okay. He made construction
- 10 to the apartment. Even if we ignore it, doesn't mean the jury
- 11 is going to ignore it, all right.
- 12 If they will consent to a stip -- to a charge to the
- 13 jury that the jury will find -- if they'll stipulate that it
- 14 diminished the value of the property, then I think we're all
- 15 right. But once he made structural changes, jurors could say,
- 16 wow, he got a benefit here. And that shows -- and, as a matter
- of fact, it shows -- it goes to his intent not to do anything
- inappropriate, that he had construction --
- 19 THE COURT: Well, I agree with you that a stipulation
- 20 would be useful, but it's the terms of the stipulation. I'm
- 21 not sure that your oral statement is what you intended. But it
- 22 does seem to me that the parties could stipulate that the
- 23 there's no claim that the defendant intended to personally
- 24 benefit by making the improvements to the property.
- MR. RUBINSTEIN: See, the word improvements is the SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 problem.
- 2 THE COURT: Pardon?
- 3 MR. RUBINSTEIN: There were not improvements. They
- 4 were improvements for the project, not for the apartment, and
- 5 that is -- that is the problem. Once you say improvements, the
- 6 natural thing, in all due respect, flows is that they weren't
- 7 improvements. They weren't improvements to an apartment. They
- 8 were an improvement to a business, and there is a distinction.
- 9 And it goes to his intent because we intend to bring out proof,
- 10 your Honor, that he had other construction done in this
- 11 apartment, that were for improvements to the apartment, and he
- 12 paid for them, personally, which goes right to the heart of his
- intent. They want to cherry pick here.
- 14 THE COURT: The issue -- the point is that the
- 15 government is not contending that he did these things for
- 16 personal benefit, those improvements, for personal benefit.
- 17 Their only argument is that those improvements were not
- 18 permitted under the terms of the grant.
- 19 MR. RUBINSTEIN: But, Judge, that -- the fact that
- they don't argue it is irrelevant.
- THE COURT: No, I'm saying --
- 22 MR. RUBINSTEIN: Because of the fact of the matter
- 23 is --
- 24 THE COURT: -- stipulate to something along those
- 25 lines.

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- 1 MR. RUBINSTEIN: All right. Well, I'll approach them
- 2 on that.
- 3 THE COURT: All right.
- 4 MR. RUBINSTEIN: But I do, I do intend to have that
- 5 witness here this morning, so I'll --
- 6 THE COURT: Make it clear --
- 7 MR. RUBINSTEIN: I'll --
- 8 THE COURT: I just --
- 9 MR. RUBINSTEIN: Yeah.
- 10 THE COURT: I thought you might -- it might be best if
- 11 the parties could work that out, because otherwise I think I'd
- 12 try and give the government an instruction, or maybe you want
- 13 me to give an instruction, or maybe that could be the terms of
- 14 the stipulation, whichever way you want. It's a non-issue.
- 15 (Counsel conferring)
- 16 THE COURT: Also, I don't think that the Government's
- 17 position is that Dr. Karron misappropriated government money
- 18 for personal use by including -- by payment of medical
- 19 expenses. It's their position that medical expenses were not
- 20 provided for in any written plan by the corporation, and that
- 21 the guidelines for the grant indicated that there had to be a
- 22 written plan. I may be wrong.
- 23 MR. RUBINSTEIN: Again, Judge, it's not -- well, first
- I will hear from them to see if you're wrong. I don't know if
- 25 you're right or wrong, Judge. I can't speak for them.

- 1 MR. KWOK: That's exactly the Government's position,
- 2 your Honor. We have never taken a position about what are
- 3 reason or unreasonable plans out there in corporate America.
- 4 Our only position is that under the terms of the grant it is
- 5 very clear that you've got to have a written plan. And I don't
- 6 think it's seriously contested that this company did not have a
- 7 plan during the period of the grant. That's all we are arguing
- 8 about. So I don't see the relevance of these witnesses who are
- 9 going to come in and testify about what generally happens in
- 10 the industry. That simply has no bearing. Obviously, the
- 11 first question we're going to ask is, you have no knowledge
- 12 about the grant.
- 13 THE COURT: Depends on how you argue. I mean, if you
- 14 argue along the line that Mr. Rubinstein suggests, and argued
- 15 that this is a -- these were personal benefits that Mr. Karron,
- 16 Dr. Karron decided to take, then I think it's a different --
- MR. KWOK: With respect to fringe benefits, we really
- don't intend to make that argument. It is true, your Honor,
- 19 that on some of the expenses they are used for personal
- 20 benefits such as meals like coffee, and you know, perhaps even
- 21 cleaning lady for his own apartment. But for fringe benefits
- 22 we don't intend on arguing that at all.
- 23 MR. RUBINSTEIN: Judge, they can't have it both ways.
- 24 They elicit testimony of oral surgery alleged to have been for
- 25 his improve his jaw, they elicit testimony of electrolysis

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- 1 treatment, of dental use, they do all of that and then they
- stand here and say, well, we're not going to argue that he
- 3 wasn't entitled to. If they'll stipulate, again, that the
- 4 medical expenses are fair and reasonable, the only question is
- 5 for the jury, if your Honor -- if they'll agree to a charge,
- 6 the only question is to the jury as to whether or not it was
- 7 appropriate to deduct medical expenses, regardless of what they
- 8 were for. And that would be fair. But --
- 9 THE COURT: All right.
- 10 MR. RUBINSTEIN: -- to have this volume of evidence
- 11 about all the various medical treatments is just --
- 12 THE COURT: I didn't intend -- I agree with you on it.
- 13 I'll entertain a motion to strike, if you want, to strike
- 14 certain testimony if you want.
- 15 MR. RUBINSTEIN: All right, I would make that motion,
- 16 Judge.
- 17 THE COURT: Well, you better tell me what you want
- 18 struck.
- 19 MR. RUBINSTEIN: All references to the types of
- 20 medical treatment that he had. It's irrelevant for their
- 21 determination, the types of medical expenses that he had;
- 22 therefore, they have the medical expenses. They don't need to
- 23 designate them.
- 24 THE COURT: Well, if the parties agree on such a
- 25 stipulation, then I'll entertain it and give it to the jury.

- 1 (Counsel conferring)
- 2 MR. KWOK: Your Honor, we just conferred. I think
- 3 maybe the most sensible course would be for the Court to
- 4 instruct the jury something along the lines of, you are to
- 5 disregard about the particular nature of the medical procedures
- 6 that the medical expenses were used to pay for. You are only
- 7 to consider that those expenditures were made, something along
- 8 those lines.
- 9 THE COURT: Well, I drafted something. I start it
- 10 this way. You are to disregard -- you are to disregard the
- 11 testimony you heard with respect to the nature of the medical
- 12 expenses which were charged by the defendant. The government
- is only claiming that under the terms of the grant, medical
- 14 expenses would only be paid pursuant to a health plan.
- 15 MR. KWOK: Your Honor, can you repeat the last part?
- 16 I couldn't quite catch the last few words.
- 17 THE COURT: I said, the government is only claiming
- 18 that under the terms of the grant medical expenses could only
- 19 be paid pursuant to a written health plan.
- MR. KWOK: I think that's fine, your Honor. Thank
- 21 you.
- MR. RUBINSTEIN: That's acceptable, your Honor.
- 23 THE COURT: Did we reach an agreement on the real
- 24 estate issue?
- MR. KWOK: I don't think so, your Honor. I suggested SOUTHERN DISTRICT REPORTERS, P.C.

- 1 a stipulation along the lines of, you know, there is no
- 2 evidence to show that the, quote unquote, renovations either
- 3 increased or decreased the value of the property. That's not
- 4 acceptable to the defendant because they take the view that it
- 5 did decrease, but we --
- 6 THE COURT: I'm sorry, I was rereading my instruction.
- 7 MR. KWOK: No. We previously conferred. I suggested
- 8 a proposed stipulation along the lines of, there is no evidence
- 9 in the case that these, quote unquote, renovations either
- increased or decreased the value of the property, to take that
- 11 issue out of the case. But I think Mr. Rubinstein's position
- is that it did increase the value of the property.
- 13 THE COURT: Why isn't it there's no -- why isn't the
- issue -- there's no claim by the government that the defendant
- 15 personally benefited by any improvements that were made to the
- 16 apartment. The only claim you're -- the claim you're making is
- 17 that the improvements were not permitted, as I understand it,
- 18 were not permitted under the terms of the grant because they
- 19 exceeded the flexibility portion of the grant which allowed
- 20 certain reallocation of expenses, but I don't --in other words,
- 21 what I'm trying to do is think about the issue in the case
- 22 comes down, as Mr. Rubinstein has stated earlier, as to whether
- 23 the defendant intended to misapply the monies without
- 24 authority.
- MR. RUBINSTEIN: Judge, that's why I think that the SOUTHERN DISTRICT REPORTERS, P.C.

- 1 word improvements is just an inappropriate word.
- THE COURT: You don't like it, improvements?
- 3 MR. RUBINSTEIN: No, because I intend to argue that
- 4 this was site preparation, and it wasn't an improvement. It's
- 5 site preparation, which is permissible under the grant. So the
- 6 whole connotation of improvements means it benefited the
- 7 property -- it might have benefited an office, but it didn't
- 8 benefit residence. And I'm not asking that they say that
- 9 anything be said about that it diminished the value of the
- 10 property. I'm only asking that it be, you know, clear that
- 11 this was not any benefit to Dr. Karron financially.
- Judge, could I run out for personal reason?
- 13 THE COURT: Yeah, let's all do that. The juror ought
- 14 to be here any minute.
- MR. RUBINSTEIN: Thank you.
- 16 (Recess)
- 17 THE COURT: All right, bring in the jury, Robert.
- 18 (Jury entering)
- 19 THE COURT: All right, please be seated.
- 20 Ladies and gentlemen, I guess you had as hot a time
- 21 getting here as I did. I walked for half an hour, and I must
- 22 say, stay out of the sun.
- 23 But on Friday we went over the case and I was given
- 24 assurance that we ought to be done this week, which is what I
- 25 know you're anxious to know, and so let's see how it goes.

- The next thing is that I got an instruction to give
- you, and that is that you're to disregard any testimony you
- 3 heard with respect to the nature of the medical expenses which
- 4 were charged by the defendant. The government is only claiming
- 5 that under the terms of the grant, medical expenses could only
- 6 be paid pursuant to a written health plan.
- 7 All right. Then your next witness?
- 8 MR. EVERDELL: Yes, your Honor. The government calls
- 9 Robert Benedict.
- 10 ROBERT BENEDICT,
- 11 called as a witness by the government,
- having been duly sworn, testified as follows:
- 13 DIRECT EXAMINATION
- 14 BY MR. EVERDELL:
- THE COURT: Please proceed.
- MR. EVERDELL: Thank you, your Honor.
- 17 Q. Good morning, Mr. Benedict.
- 18 A. Good morning.
- 19 Q. What do you do for a living?
- 20 A. I'm a grant administrator and grant manager.
- 21 Q. How long have you been doing that for?
- 22 A. I've been doing it for 15 years.
- Q. Now, what do you do as a grant manager or grant
- 24 administrator?
- 25 A. I manage the financial aspects and program aspects of SOUTHERN DISTRICT REPORTERS, P.C.

- 1 federal grants, state grants.
- Q. When you say you manage the financial aspects, what do you
- 3 mean by that?
- 4 A. I make sure all of the expenditures are allowable to the
- 5 grant, and that you file reports as required by the granting
- 6 agency.
- 7 Q. And where did you work as a grant manager?
- 8 A. I worked for IBM for 35 years, nine years as a grant
- 9 manager, and I worked for Axiom as a consultant for two more
- 10 years on IBM grants. And then I worked for a year for CASI, or
- 11 six months for CASI, and five years for communities and schools
- of Brunswick County, North Carolina.
- 13 Q. And prior to becoming a grant manager, what did you do for
- 14 a living?
- 15 A. I was an accountant and finance manager for IBM.
- 16 Q. For how long?
- 17 A. Nine years in, or 12 years in accounting and 23 years in
- management.
- 19 Q. And what's your educational background?
- 20 A. I have a degree in accounting from Champlain College in
- 21 Burlington, Vermont, further studies non-grant related at the
- 22 University of Vermont, and Wharton School of Business at the
- 23 University of Virginia, and I have a certification in grant
- 24 management from management concepts.
- Q. Mr. Benedict, are you familiar with an organization called SOUTHERN DISTRICT REPORTERS, P.C.

- 1 the National Institute for Standards and Technology?
- 2 A. Yes, sir, I am.
- 3 Q. Is that sometimes called NIST?
- 4 A. Yes.
- 5 O. And what is NIST?
- 6 A. NIST is a branch of the federal government. And my
- 7 experience with NIST is that they have a program called ATP,
- 8 which is Advanced Technology Programs, and they fund high risk
- 9 technology projects.
- 10 Q. Have you done any grant managing or accounting work for
- 11 companies that received ATP grants?
- 12 A. Yes. The nine years I was with IBM and the two years as a
- 13 consultant, were all with NIST ATP grants.
- 14 Q. And how many grants did you work on with IBM and the
- 15 consultants that you mentioned?
- 16 A. Three. There was a single grant and two consortium grants.
- 17 Q. And about when were those grants awarded?
- 18 A. Those grants were between 1994 and 2002, the end of 2002.
- 19 Q. And what did you do as the grant manager for those grants?
- 20 A. I managed, as I said earlier, the financial aspects of
- 21 those projects. In the single grant it was just IBM, so it was
- 22 filing the reports with NIST ATP.
- 23 For the IBM project and the consortium, it was filing
- 24 the financial reports for the nine consortium members, plus
- 25 IBM, and making sure that they all had their audits in, and all SOUTHERN DISTRICT REPORTERS, P.C.

- 1 the financial data as allowed by the grant.
- Q. And you mentioned you also worked briefly for CASI, is that
- 3 right?
- 4 A. Yes, sir.
- 5 Q. Did CASI receive an ATP grant?
- 6 A. Yes, sir, it did.
- 7 Q. Who is the head of CASI?
- 8 A. Dr. Karron.
- 9 Q. Did there come a time when you met Dr. Karron in person?
- 10 A. Yes, sir, I did.
- 11 Q. Did you -- do you see Dr. Karron here in the courtroom
- 12 today?
- 13 A. Yes, sir.
- 14 Q. Could you please point him out and identify an article of
- 15 clothing he's wearing?
- 16 A. He's the gentleman over there with the, excuse me, with the
- 17 red tie.
- 18 THE COURT: The record will reflect that the witness
- 19 has identified the defendant.
- Q. How did you first meet the defendant?
- 21 A. I was at an ATP proposers conference in the Spring of 2001.
- 22 Dr. Karron stood up in the conference during part of the
- 23 presentations in the Q. and A. session and he said that he had
- 24 just received a grant and was wondering if anybody had any idea
- 25 where he could get some financial guidance with the grants.

- 1 Q. Before we get to what Dr. Karron said, can you just
- 2 describe what the proposers conference was?
- 3 A. Proposers conference is a conference for people who are
- 4 interested in submitting applications for ATP grants, and for
- 5 people who have received ATP grants to find out what rules
- 6 guidance they have to follow in order to meet the requirements
- 7 of compliance requirements of the grants.
- 8 Q. And are these ATP people present at that proposal?
- 9 A. Yes, sir, they are.
- 10 Q. And what, if anything, did they discuss about the rules
- 11 about the ATP grant?
- 12 A. They talk about --
- 13 THE COURT: At that conference.
- 14 Q. Yes, the proposers conference.
- 15 A. They talked about the financial requirements, the reporting
- 16 requirements, what the federal guidelines are for, and rules
- 17 are for grants, and what reports had to be filed when audits
- 18 had to be filed, those kind of items.
- 19 Q. What, if anything, did they discuss about spending the
- 20 grant money?
- 21 A. The grant money is to be spent only as the budget allows
- 22 and as the grant specifies, and in accordance with the cost
- 23 principles that rule those grants.
- Q. Did they discuss any of the cost principles?
- 25 A. They didn't specifically discuss individual cost

1 principles, but they talked about which cost principles

- 2 applied.
- 3 Q. Such as?
- 4 A. A-110 for nonprofits, A-87 for profits, 31-2, which is a
- 5 FAR regulation.
- 6 Q. Now, why were you at that meeting?
- 7 A. I was at that meeting representing IBM. We were looking at
- 8 doing another application.
- 9 Q. And you mentioned that the defendant stood up at the
- 10 meeting, is that right?
- 11 A. Yes.
- 12 Q. And what exactly did he say?
- 13 A. He asked if there was anybody who could give him guidance
- on where he could get some financial assistance with his grant.
- 15 Q. And did you in fact meet defendant?
- 16 A. Yes, sir, I did.
- 17 Q. And how did that happen?
- 18 A. I met him at a breakout session during the conference. I
- 19 approached him and I said, I wasn't looking for a job, I was a
- 20 grant manager; that if he had any questions, I would be happy
- 21 to do what I could to answer them.
- Q. And what was his response?
- 23 A. He asked me, why I would do that? And I said, you asked
- 24 for help and so I'm offering it.
- Q. Did you ask for any payment for your advice?

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- 1 A. No, sir, I did not.
- 2 Q. Did the defendant ever take you up on your offer to give
- 3 him advice on questions regarding the ATP funds?
- 4 A. I received a phone call about three months, four months
- 5 later from Lee Gurfein, who introduced himself as the current
- 6 grant administrator for Dr. Karron, and he asked me some
- 7 questions.
- 8 Q. Now, what questions did he ask you?
- 9 A. He was asking me how they could get the expenditures
- 10 associated with his office covered by the grant.
- 11 Q. When you say expenditures associated with his office, what
- 12 do you mean?
- 13 A. His rent.
- 14 Q. And what did you tell him?
- 15 A. I asked him if it was included in his budget -- I suspected
- 16 it would not be, because --
- 17 MR. RUBINSTEIN: Object to what he suspected.
- 18 THE COURT: Objection sustained as to what you
- 19 suspected.
- 20 A. I asked him if it was covered in his budget, and he said it
- 21 wasn't. I told him the only way that he could get the rent
- 22 covered was to do a budget amendment and get ATP to authorize
- 23 it.
- Q. And what was his response, if anything?
- 25 MR. RUBINSTEIN: Objection to -- who is this, Gurfein?

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- 1 MR. EVERDELL: Yes.
- THE WITNESS: Yes, sir.
- 3 MR. RUBINSTEIN: I object to Gurfein.
- 4 THE COURT: Objection sustained.
- 5 Q. Was that the only call you received asking your advice on
- 6 spending related questions?
- 7 A. No, sir. I received maybe three other phone calls from Dr.
- 8 Karron, as well as Mr. Gerfein, and basically they were all
- 9 asking the same questions, how do I get the rent covered in the
- 10 ATP grant.
- 11 Q. And what was your response on all those occasion?
- 12 A. All those occasions it was the same response; if it's not
- in the budget, you have to go get an ATP budget amendment and
- 14 ATP authorization to include it.
- 15 Q. Did you tell him whether rent was generally included as an
- 16 allowable expense?
- 17 A. No, it's an indirect expense and it's not usually allowed
- in a single grant.
- 19 THE COURT: Did you tell him that?
- THE WITNESS: Yes, sir, I did.
- 21 Q. And approximately when did these phone conversations
- 22 happen?
- 23 A. They happened every three or four months during 2000, the
- 24 end of 2001 and 2002.
- 25 Q. Did you give the defendant or Lee Gerfein any general

- 1 advice about spending ATP funds during these conversations?
- 2 A. Do what's allowed in the budget.
- 3 Q. And did you recommend that they do anything in particular
- 4 to familiarize themselves with the rules?
- 5 A. Yes, sir, I did. I gave them the catalog for management
- 6 concepts, which is an organization that does granting education
- 7 for both funders of grants and receivers of grants. I told
- 8 him -- I gave him their website, I gave him the catalog and I
- 9 suggested that they go get the education.
- 10 Q. To your knowledge, do you know if the defendant or anyone
- on his staff ever got the education that you were requesting?
- 12 A. Not to my knowledge, no.
- 13 Q. How do you know that?
- 14 A. Well, when I became employed with ATP, I discussed this
- 15 with Dr. Karron, and he said he did not know that.
- 16 Q. I'm sorry, he said employed --
- 17 THE COURT: Employed with ATP?
- 18 A. I mean with CASI. Dr. Karron said he did not do that.
- 19 Q. Did there come a time when you became more involved in the
- 20 CASI ATP grant?
- 21 A. Yes, sir.
- 22 O. And how did you become more involved?
- 23 A. I had finished my consulting work with IBM at the end of
- 24 2002, and received a call from Dr. Karron, who indicated that
- 25 he was not getting what he needed from his ATP administers and SOUTHERN DISTRICT REPORTERS, P.C.

1 was wondering if I would come to work for him as the grant

- 2 administrator.
- Q. When did he call you to do -- to ask you that?
- 4 A. That was December 2002.
- 5 Q. And did he say why he wanted to hire you?
- 6 A. Because I had grant administration background.
- 7 Q. Did you accept the job?
- 8 A. Yes, sir, I did.
- 9 Q. What was your understanding of what your job
- 10 responsibilities would be at CASI?
- 11 A. My job, as I understood it, my job responsibilities would
- 12 be to administer the grant that he had, which was a single
- 13 grant, would require my looking at the books assuring all the
- 14 expenditures were allowed by the grant, and that the reports --
- and get the reports filed to ATP.
- 16 Q. How long did you work for CASI?
- 17 A. I worked for CASI for about eight months.
- 18 Q. So that's roughly until when?
- 19 A. August --
- 20 Q. Of?
- 21 A. 2003.
- 22 Q. And were you paid anything for this job?
- 23 A. Yes.
- 24 O. What?
- 25 A. \$60 an hour. I worked 20 hours a week.

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1 Q. Did you have any particular task concerning the budget when

- you started working at CASI?
- 3 A. First thing Dr. Karron wanted me to do was to submit a
- 4 budget amendment. I believe at the time what he was trying to
- 5 do was move money from --
- 6 THE COURT: Just what he told you.
- 7 THE WITNESS: Pardon.
- 8 THE COURT: Just what he told you.
- 9 THE WITNESS: He told me to do a budget amendment to
- 10 move money from the salary line in his grant, to the equipment
- 11 line in his grant, because he needed additional equipment for
- 12 the project.
- 13 Q. Do you know what sort of equipment he wanted to buy?
- 14 A. No, sir, I don't.
- 15 Q. What facets of the budget --
- 16 THE COURT: Particular year?
- 17 THE WITNESS: Pardon?
- 18 THE COURT: What year of the grant are you referring
- 19 to?
- 20 THE WITNESS: I'm referring to the year 2003.
- 21 Q. So that would be the second year?
- 22 A. Yes.
- 23 Q. What facets of the budget revision did you work on?
- 24 A. I worked on doing the budget amendment, I got the financial
- 25 numbers lined up, as he had requested, and was ready to submit SOUTHERN DISTRICT REPORTERS, P.C.

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1 the budget amendment, but Dr. Karron added a significant number

- 2 of technical supporting documentation to the amendment. I
- 3 advised he didn't need that data; that the budget people were
- 4 not going to be interested in it; it wouldn't mean anything to
- 5 them; they wouldn't read it, and it would slow down the
- 6 process. He told me that that's what they like. And we
- 7 included that when we submitted the budget amendment.
- 8 Q. At the time, to your knowledge, was this the first budget
- 9 revision that CASI submitted?
- 10 A. To my knowledge, sir, it was.
- 11 Q. And what led you to believe that?
- 12 A. It was -- there were no budget amendments numbered prior to
- 13 the one that I submitted.
- 14 Q. Did you learn later whether this was in fact the first
- 15 budget amendment?
- 16 A. No, sir, it was not. There were numerous other budget
- amendments submitted prior to my getting to CASI.
- 18 (Continued on next page)

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8697KAR2 Benedict - direct

- 1 BY MR. EVERDELL:
- Q. Were those in year one of the grant?
- 3 A. One and two, as far as I understand.
- 4 Q. Did you receive a response from ATP on the proposed budget
- 5 amendment that you worked on?
- 6 A. No, sir, we did not.
- 7 THE COURT: When did you file it?
- 8 THE WITNESS: Filed it in January 2003.
- 9 Q. So, was it approved?
- 10 A. No, it was not, not to my knowledge.
- 11 Q. Did you ever visit the site where CASI was conducting its
- 12 research?
- 13 A. Yes, I did.
- 14 Q. Where was that?
- 15 A. It was in Manhattan on 33rd Street, I believe, East 33rd.
- 16 Q. Was that an apartment or an office?
- 17 A. It was an apartment/office. There was a kitchenette, a
- 18 bathroom and a bedroom intact, and the rest of the apartment
- 19 had been gutted and turned into a software development lab. It
- 20 had tables that ran both sides of the main room, with computers
- 21 on both sides.
- 22 Q. And whose apartment was it?
- 23 A. Dr. Karron's.
- Q. When did you first go there?
- 25 A. January 2003.

8697KAR2 Benedict - direct

- 1 Q. Why did you go to the apartment?
- 2 A. I went to the apartment to look at the financial records
- 3 and to submit the quarterly report for the fourth quarter of
- 4 2002.
- 5 Q. Why did you need to prepare a quarterly financial report?
- 6 A. It's required by the ATP grant.
- 7 Q. What material did you look at in order to prepare the
- 8 report?
- 9 A. I looked at the Quick Book files, which is the accounting
- 10 system used by CASI, and determined that we could not file the
- 11 report based on the data that was in those records.
- 12 Q. Well, what, if anything, did you notice when you were
- looking at the books of CASI?
- 14 A. I noticed that all of the funds were commingled, which is
- 15 not allowed by ATP.
- 16 MR. RUBINSTEIN: Objection. Move to strike, your
- Honor.
- 18 THE COURT: Disregard the part "which is not allowed
- 19 by ATP."
- 20 Q. Just to clarify. You said you noticed the funds were
- 21 commingled, is that right?
- 22 A. Yes, sir.
- 23 Q. We will get to that in a second. What else did you notice?
- 24 A. I noticed that there were no documented procedures of any
- 25 kind identifying how the accounting records were to be treated SOUTHERN DISTRICT REPORTERS, P.C.

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- or how the benefits package was to be administered.
- Q. Did you notice anything else? Who had control of the books
- 3 and records?
- 4 A. Dr. Karron had all control of all the documentations.
- 5 There were no separations of duties.
- 6 Q. OK. Let's take those one at a time. So you mentioned
- 7 written procedures.
- 8 A. Yes, sir.
- 9 Q. Or lack of written procedures. Can you explain what you
- 10 meant when you said there were no written procedures.
- 11 A. In a normal business environment you would have procedures
- 12 that tell you when to pay bills, what bills to pay, how to
- 13 treat checks as they come in, where to deposit them. There was
- 14 nothing written of any kind.
- 15 Q. And why do you have those procedures in place normally?
- 16 A. So you can ensure a consistent operation within the
- 17 financial realm.
- 18 Q. Did you discuss the lack of Written procedures with Dr.
- 19 Karron?
- 20 A. Dr. Karron said that their business was so small, he knew
- 21 what to do and he didn't need to spend time doing written
- 22 procedures.
- 23 Q. Were written procedures ever instituted while you were
- working at CASI?
- 25 A. They were not as far as I know. I know that we spent some SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 time trying to buy a handbook, an employees handbook, and spent
- 2 some time talking to people to do an HR, human relations or
- 3 human resources manual, but that was primarily done by Joan
- 4 Hayes.
- 5 Q. You mentioned also commingling.
- 6 A. Yes, sir.
- 7 Q. Can you explain what you mean by the funds were commingled.
- 8 A. Commingling is when you are taking the grant money, and you
- 9 are putting it in the same accounts as nongrant money.
- 10 Q. And what if anything did you notice about the books at CASI
- 11 with respect to that?
- 12 A. They were all together.
- 13 O. What do you mean they were all together?
- 14 A. All the monies were together, all the expenses were
- 15 together. There was no separation, so you could not tell what
- 16 money was spent on ATP project versus what money was being
- 17 spent on other projects.
- 18 Q. Did you have any discussions with the defendant about this
- 19 issue?
- 20 A. He did not seem to be very interested or very concerned
- 21 about that.
- THE COURT: No, just answer.
- 23 A. Yes, sir, I did.
- Q. What did you tell him?
- 25 A. I told him he could not do that, and I requested that they SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 separate the books.
- Q. And what do you mean by separate the books?
- 3 A. Separate the books so that we could tell what was ATP
- 4 spending and income versus what was not non-ATP spending and
- 5 income.
- 6 Q. And what was the defendant's response to that?
- 7 A. He agreed to have the bookkeepers do that.
- 8 Q. Were the funds in fact separated out?
- 9 A. Not before I left. They were working on it, but they never
- 10 completed it.
- 11 Q. Could you tell what sources of funds the CASI was receiving
- 12 funds from?
- 13 A. Initially I could not, but over time it became apparent
- 14 that the only income coming in was the money coming in from
- 15 ATP.
- 16 Q. Did you see any other source of income besides the ATP
- 17 funds?
- 18 A. No, sir, I did not.
- 19 Q. You mentioned lastly the control of the books.
- 20 A. Yes, sir.
- 21 Q. Can you explain what you mean by that.
- 22 A. Normally in an accounting operation there is a check and
- 23 balance. You can have one person write checks, someone else
- 24 has to sign them. Dr. Karron had complete control of
- everything. He wrote the checks, he signed the checks, he SOUTHERN DISTRICT REPORTERS, P.C.

8697KAR2 Benedict - direct

- 1 controlled the checkbooks.
- 2 Q. And over time did you notice anything else about Dr.
- 3 Karron's control of the books that raised an issue in your
- 4 mind?
- 5 A. Yes, sir. While we were trying to separate the books, the
- 6 bookkeepers would make changes to the books and separating them
- 7 and calling certain expenditures CASI expenditures, certain
- 8 expenditures ATP expenditures. Dr. Karron would --
- 9 MR. RUBINSTEIN: I object to this, your Honor, unless
- 10 he has personal knowledge.
- 11 THE COURT: Objection sustained unless it's shown that
- 12 this witness had personal knowledge of the facts and hadn't
- 13 heard them from bookkeeping.
- 14 Who were the bookkeepers at the time?
- 15 THE WITNESS: The Jackson group, Frank Spring.
- 16 Q. Did you have any discussions with the defendant about this
- issue that you are talking about?
- 18 A. Yes.
- 19 O. What were the nature of those discussions?
- 20 A. The discussions were Dr. Karron had changed entries that
- 21 the Jackson group had made, and Dr. Karron said they just
- 22 didn't know what they were doing and he knew where the
- 23 expenditures needed to be.
- 24 Q. What if anything did you try to do to address these issues
- 25 that you noticed with respect to control of the books?

8697KAR2 Benedict - direct

- 1 A. The first thing we did was we no longer gave Dr. Karron
- 2 transaction capability. He could see, read the accounting
- 3 records, but he couldn't make any changes to the accounting
- 4 records.
- 5 Q. When did you make that change?
- 6 A. I made that change in the April time frame, I believe.
- 7 Q. Of which year?
- 8 A. 2003.
- 9 Q. And how did you achieve that?
- 10 A. We basically stopped giving him a writable copy of Quick
- 11 Books.
- 12 Q. Who had control of the Quick Books after you did that?
- 13 A. Frank Spring.
- 14 Q. And did you do anything else with respect to this issue to
- 15 remedy it?
- 16 A. Yes, sir, we met with his board.
- Q. When you say his board, you're referring to --
- 18 A. The CASI board. Frank Spring and I met with the CASI board
- 19 and told them of our concern with him having total control of
- 20 the checkbook, and asked that they take the checkbook away from
- 21 him, and they directed him to turn the checks over to Frank
- 22 Spring and to no longer write checks.
- Q. When did that happen?
- 24 A. That was in the June time frame, I believe in 2003.
- Q. Did you ever have check writing authority yourself?

8697KAR2 Benedict - direct

- 1 A. No, sir.
- Q. Did Dr. Karron abide by this restriction that he couldn't
- 3 sign checks anymore?
- 4 A. No.
- 5 MR. RUBINSTEIN: I object to that. The testimony is
- 6 not signing checks.
- 7 THE COURT: Sorry?
- 8 MR. RUBINSTEIN: There is no testimony that he
- 9 couldn't sign checks that I heard.
- 10 THE COURT: Well, I haven't heard that, but writable
- 11 authority of Quick Books as I understand it. I'm not going to
- 12 testify. I'm not testifying.
- 13 Q. Just so we're clear, Mr. Benedict --
- 14 THE COURT: Disregard my comment.
- 15 Q. Can you explain what action the board of directors took
- 16 with respect to Dr. Karron?
- 17 A. The board of directors told Dr. Karron to turn all the
- 18 checks over to Frank Spring and that Frank would print checks
- 19 and give them to Dr. Karron to sign.
- 20 THE COURT: Under the Quick Books?
- 21 THE WITNESS: Under Quick Books.
- 22 THE COURT: Ouick Books is the manner in which checks
- 23 were written?
- 24 THE WITNESS: Yes, sir, Quick Books is the accounting
- 25 system that both writes checks and makes deposits.

8697KAR2 Benedict - direct

1 Q. Do you know whether or not this was the only way that

- 2 checks got signed and paid after this restriction was put in
- 3 place?
- 4 A. No, it was not.
- 5 Q. Can you explain.
- 6 A. Dr. Karron used PayPal, which for all intents and purposes
- 7 subverted the direction provided by the board.
- 8 MR. RUBINSTEIN: Objection. Move to strike subverted.
- 9 THE COURT: Objection sustained. That's a conclusion
- of yours. Just tell us what happened.
- 11 A. PayPal is a service that allows you to use your credit card
- 12 to pay bills, and Dr. Karron used the CASI credit card and had
- 13 PayPal pay bills that did not go through Frank Spring.
- 14 THE COURT: Does PayPal have check writing capability?
- THE WITNESS: Yes. PayPal, you use your credit card,
- 16 you give the credit card to PayPal, PayPal charges your credit
- 17 card and then pays the bill, so PayPal actually writes the
- 18 check.
- 19 THE COURT: Writes the check for the payment of the
- 20 bill?
- 21 THE WITNESS: Yes.
- 22 THE COURT: To whatever credit card it is?
- 23 THE WITNESS: No, to whatever vendor you want the bill
- 24 to go to.
- 25 THE COURT: To whatever vendor.

SOUTHERN DISTRICT REPORTERS, P.C.

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Benedict - direct

- 1 Q. How did you know that the defendant was using PayPal?
- 2 A. We saw the PayPal charge on the American Express credit
- 3 card bill.
- 4 Q. Did you discuss this with the defendant?
- 5 A. Yes, sir.
- 6 Q. What if anything did you say to him?
- 7 A. He said he had to pay the bills.
- 8 Q. Now, Mr. Benedict, in the course of reviewing CASI's books
- 9 and records, were there any particular expenditures that you
- 10 noticed?
- 11 A. Early on there was a \$75,000 payroll advance.
- 12 O. To who?
- 13 A. To Dr. Karron. There were payments for rent. There were
- 14 payments to an employee that I did not know and actually never
- 15 met. And there were some medical charges.
- 16 Q. OK. And what did you notice about these expenditures in
- 17 particular?
- 18 A. They were either not allowed by ATP or they would be
- 19 questioned by ATP.
- 20 Q. All right. Let's take them one at a time. You mentioned
- 21 rent payments that you noticed.
- 22 A. Yes.
- 23 Q. Can you explain what you noticed about rent payments.
- 24 A. Rent payments were being made with ATP funds, and rent is
- not in the budget so are not allowed by ATP. They would be

- 1 disallowed costs.
- 2 Q. Did you talk to the defendant about this issue with rent
- 3 payments?
- 4 A. Yes, I did, and as I said before he said, "I have to pay
- 5 the bills." And on another occasion he said, look, if I don't
- 6 pay the rent, I'm going to be out on the street and I can't do
- 7 anything for the grant then, so they ought to understand that.
- 8 Q. Did he mention anything else with respect to what he
- 9 planned to do about the rent payments?
- 10 THE COURT: These are current rent payments?
- 11 THE WITNESS: Yes.
- 12 A. He said that he was going to move to Connecticut and that
- 13 he would convert the entire apartment to a place of business,
- 14 he would turn his bedroom into an office. However, none of
- 15 that actually happened.
- 16 Q. What if anything did you tell him when he told you about
- 17 this Connecticut plan?
- 18 A. I told him it wouldn't matter anyway because the rent was
- 19 not going to be allowed by ATP.
- 20 Q. All right. Let's talk about the employee, the charges to
- 21 the employee that you didn't know. Do you recall what those
- 22 charges were for?
- 23 A. As explained by Dr. Karron the charges were for an
- 24 individual to scan data into his database. The process was
- 25 that invoices and other data relevant to the CASI business

8697KAR2 Benedict - direct

1 would come into the office, the data would be scanned into a

- 2 program called I believe Paper Port, and then the original
- 3 document would be shredded.
- 4 Q. Did you have any discussions with the defendant about those
- 5 charges?
- 6 A. Those charges are not in the budget, they are not relevant
- 7 to the performance of the grant, so they would not be allowed.
- 8 Q. What was his response?
- 9 A. Again he said he had to pay the bills.
- 10 THE COURT: What sort of documents are you talking
- 11 about?
- 12 THE WITNESS: All documents, original invoices,
- 13 letters, everything was scanned into this system called Paper
- 14 Port.
- 15 THE COURT: Didn't they have backup for bills?
- 16 THE WITNESS: No, they shredded everything.
- 17 THE COURT: What period of time was this?
- 18 THE WITNESS: While I was there from January until
- 19 August 2003.
- 20 THE COURT: When did this particular event take place
- 21 that you learned about shredding?
- 22 THE WITNESS: I was there when he was doing it. Dr.
- 23 Karron's view was that he was running a paperless office and
- that he could find any data or any documents he needed to find
- in Paper Port, he didn't need originals.

8697KAR2 Benedict - direct

1 THE COURT: And what do you call this computer system?

- THE WITNESS: I think it's called Paper Port.
- 3 THE COURT: So it would be reflected though in the
- 4 computer.
- 5 THE WITNESS: Yes.
- 6 THE COURT: The transaction would be.
- 7 THE WITNESS: Yes, the documents would be there.
- 8 THE COURT: In computer form.
- 9 THE WITNESS: In computer form.
- 10 THE COURT: Retrievable, but the originals would be
- 11 shredded --
- 12 THE WITNESS: Yes, sir.
- 13 THE COURT: -- because of storage problems or
- 14 whatever.
- 15 THE WITNESS: Yes.
- 16 Q. Did you ever try to access the documents on Paper Port?
- 17 A. I did. It was difficult.
- 18 Q. What do you mean by difficult?
- 19 A. The data would be filed in numerous places. You could find
- 20 the data. For example, if you were looking for a vendor, you
- 21 could find the data by the date that it was submitted or
- 22 entered into the system, you could find it by the vendor, but
- 23 some of the data had comments on it. The same invoice stored
- in another place didn't have those comments on it, so you could
- 25 never tell what the source document really was.

8697KAR2 Benedict - direct

- 1 Q. All right. You mentioned medical expenses as well, right?
- 2 A. Yes.
- 3 Q. What did you notice about the medical expenses?
- 4 A. In a traditional business you have a fringe benefits
- 5 package that's associated with paying a health care provider
- 6 like Blue Cross/Blue Shield or Humana or United Health Care,
- 7 any one of those types of providers. In CASI's case the
- 8 medical expenses were all paid directly to a medical provider,
- 9 a doctor, a pharmacy, something, and as such every medical bill
- 10 would be questioned.
- 11 Q. What do you mean by that?
- 12 A. They would want to look at every medical bill and want to
- 13 know exactly what every medical bill was used for.
- 14 THE COURT: Who is they?
- 15 THE WITNESS: ATP.
- 16 Q. Did you have any conversations with the defendant about
- 17 this medical benefits issue?
- 18 A. Yes. Dr. Karron's view was --
- 19 MR. RUBINSTEIN: I'm going to object as not relevant
- in view of your Honor's instruction.
- 21 THE COURT: This doesn't go to the nature of the
- 22 expenses. You are instructed not to --
- 23 MR. RUBINSTEIN: Then I will withdraw the objection.
- 24 THE COURT: -- get into the nature of the expenses.
- 25 A. Dr. Karron just said he had the fringe benefit money in his SOUTHERN DISTRICT REPORTERS, P.C.

- 1 grant and that he was under his fringe benefits budget, so he
- 2 could use his fringe benefit expenditures.
- 3 Q. Do you know whether a written benefits policy is required
- 4 in the ATP rules?
- 5 A. I do not think so.
- THE COURT: You do not think what?
- 7 THE WITNESS: That there is a specific requirement
- 8 that you have a health benefit plan. I don't know of any such
- 9 guideline in ATP.
- 10 THE COURT: In connection with this grant? Did you
- 11 examine this grant's --
- 12 THE WITNESS: No, sir, I did not.
- 13 Q. Let's talk about the \$75,000 payment that you mentioned
- 14 before.
- 15 A. Yes, sir.
- 16 Q. Who is that payment to?
- 17 A. Dr. Karron.
- 18 Q. And when did that payment occur?
- 19 A. Right after he drew down the first money from ATP.
- 20 Q. Did you have any discussions with Dr. Karron about that
- 21 expense?
- 22 A. Yes. I told Dr. Karron that payroll advances were not
- 23 allowed by ATP grants, and he said that he would pay the grant
- or pay the payroll advance back.
- Q. To your knowledge, did the defendant ever pay back the SOUTHERN DISTRICT REPORTERS, P.C.

- 1 salary advance?
- 2 A. No, sir.
- 3 O. In general what did Dr. Karron do with your advice
- 4 concerning expenditures?
- 5 A. My experience was if it fit what he wanted to do, he
- 6 accepted it; if it conflicted with what he wanted to do, he
- 7 ignored it.
- 8 Q. What ultimately happened to CASI's ATP grant?
- 9 A. The grant was suspended.
- 10 Q. And when was that?
- 11 A. I believe it was June/July 2003.
- 12 Q. Did you do any further work for CASI after the grant was
- 13 suspended?
- 14 A. Yes, I did.
- 15 Q. What did you do?
- 16 A. I worked with the auditor on the first and second audit.
- 17 The intent was to try to help them find whatever they needed.
- 18 I also prepared the --
- 19 THE COURT: Who was the auditor you worked with?
- 20 THE WITNESS: Belinda Riley.
- 21 A. I also prepared the financial reports for the fourth
- 22 quarter 2002, first quarter of 2003 and the second quarter of
- 23 2003. The intent there was to correct previous reports that
- 24 were filed inaccurately.
- 25 O. So these were revised financial reports?

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 A. Yes, sir, they were.
- Q. Were these quarterly financial reports?
- 3 A. Yes, sir, they were.
- 4 Q. Whose idea was it to create revised financial reports?
- 5 A. Mine.
- 6 Q. Why did you want to do that?
- 7 A. Because the initial reports had indicated that CASI had
- 8 contributed the match funding requirement that they had in the
- 9 grant, when in reality they had not, they had not contributed
- 10 any income to the grant.
- 11 Q. How did you learn that CASI had not contributed to the cost
- 12 share?
- 13 A. By looking at their books. You could tell there was no
- 14 money coming in from any other source other than ATP, so there
- 15 was no money to contribute to the project other than the ATP
- 16 funding. There was nothing evidenced in his books that
- indicated that any ATP match had occurred.
- 18 Q. Did you talk to the defendant about creating these revised
- 19 financial reports?
- 20 A. Yes, sir, I did. The reports were completed in the middle
- of July, and it took us about a month to actually file them
- 22 because we were reworking the cover letter.
- 23 Q. Before we get to the cover letter, let's look at some of
- the reports. First, who did you send the revised reports to?
- 25 A. I sent the reports to ATP.

Benedict - direct

8697KAR2

- 1 Q. If you could look at Government's Exhibits 40A, 41A, 42A
- and 43A, they should be in front of you in that stack.
- 3 A. Yes, sir.
- 4 O. Take a look at those.
- 5 A. The numbers again?
- 6 Q. 40A, 41A, 42A and 43A.
- 7 A. Yes, sir.
- 8 Q. Are those the revised financial reports you referred to?
- 9 A. Yes, sir, they are.
- 10 Q. Now if you could look at 40, 41, 42 and 43. Do you see
- 11 those documents?
- 12 A. Yes, sir.
- 13 Q. Are those the original financial reports that you revised?
- 14 A. Yes, sir.
- 15 Q. Let's take an example. If you could look at 40 versus 40A.
- 16 We will put those up on the screen.
- 17 A. Yes, sir.
- 18 Q. Which time period do these reports cover?
- 19 A. October 2001 through December 2001.
- 20 Q. Is that the first quarter of the grant?
- 21 A. I believe so, yes, sir.
- 22 Q. And which is the original and which is the revised?
- 23 A. The original is 40, the revised is 40A.
- Q. If you could look specifically at line I.
- 25 A. Yes.

- 1 Q. Line I in Government Exhibit's 40, first of all, what is
- line I supposed to be? What is that number supposed to mean?
- 3 A. It's supposed to mean the amount of money that the grant
- 4 holder used of his own funding to match the money that the ATP
- 5 people provided.
- 6 Q. Is that the cost share?
- 7 A. Yes, sir.
- 8 Q. What number is reflected in 40 for the cost share?
- 9 A. \$12,320.
- 10 Q. And if you look at 40A, which is the revised report you
- 11 identified before.
- 12 A. Yes, sir.
- 13 Q. What is reflected on line I as the cost share?
- 14 A. Zero.
- 15 Q. So, what does that mean?
- 16 A. That means there was no CASI match.
- 17 Q. And for the other reports I showed you that I had you look
- 18 at, does the same thing appear in all of these reports
- 19 comparing the original to the revised?
- 20 A. Yes.
- Q. And do you see also in 40 the line J?
- 22 A. Yes.
- Q. The federal share of net outlays?
- 24 A. Yes.
- Q. What is that number supposed to represent?

8697KAR2 Benedict - direct

1 A. That amount is supposed to represent the amount of money

- that you spent on ATP's project.
- 3 O. And is that number in fact accurate?
- 4 A. No.
- 5 Q. Why not?
- THE COURT: Which document?
- 7 MR. EVERDELL: Still looking at 40, line J.
- 8 Q. Is that number in fact accurate?
- 9 A. No.
- 10 Q. Why not?
- 11 A. Because there was no way to substantiate any number based
- on the condition of the books.
- Q. What about in 40A, the same line, line J?
- 14 A. That number is the amount of money that Dr. Karron drew
- 15 down from ATP. It's not an accurate number either, but it was
- 16 more accurate than anything else that I could put in there, and
- 17 my intent was to make sure, regardless of any other numbers on
- 18 those reports, that the fact that there was no match
- 19 contributed was recorded.
- 20 Q. And your intent meaning your intent in submitting these to
- 21 NIST?
- 22 A. Was to make sure that they understood that there was no
- 23 match and that they would take a harder look at this project.
- 24 Q. Is that why you submitted these revised reports to NIST?
- 25 A. Yes.

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1 Q. Did you submit a revised financial information with a cover

- 2 letter?
- 3 A. Yes.
- 4 Q. Did you draft the letter?
- 5 A. I drafted the initial letter. This is not the initial
- 6 letter. This is a revised letter that, as I said, we worked on
- 7 for approximately a month.
- 8 Q. All right. Let's look at the letter you're referring to,
- 9 Government's 48. If you could put that on the screen.
- 10 MR. RUBINSTEIN: Is that in evidence?
- 11 MR. EVERDELL: It's already in evidence.
- 12 THE COURT: Is it in evidence?
- 13 MR. EVERDELL: I believe so. It was in evidence
- 14 through Hope Snowden.
- 15 THE COURT: I don't see it.
- 16 DEPUTY COURT CLERK: June 4. 48.
- 17 THE COURT: Oh, yes.
- 18 Q. Do you see that letter, Mr. Benedict?
- 19 A. Yes, sir.
- 20 Q. If we could blow up the first two paragraphs.
- 21 If you could please read the first paragraph of the
- 22 letter?
- 23 A. "Ms. Snowden, please believe Dr. Karron did not knowingly
- 24 misstate his SF269A submissions through year one. He signed
- documents prepared by his project administrator, who, along

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1 with Dr. Karron, did not understand the ATP guidelines or cost

- 2 principles FAR31.2, and mistook certain financial deposits by
- 3 Dr. Karron for member contributions."
- 4 Q. Now, Mr. Benedict, did you write that paragraph?
- 5 A. No.
- 6 Q. Who wrote that paragraph?
- 7 A. Primarily Dr. Karron. He did ask me to include the
- 8 financial numbers that I was always referencing.
- 9 THE COURT: Did anyone else participate in the
- 10 drafting?
- 11 THE WITNESS: No, sir.
- 12 Q. But just to be clear, that first paragraph was added at the
- 13 request of Dr. Karron?
- 14 A. Yes, sir.
- 15 Q. All right. If you could please read the first three
- sentences in the second paragraph.
- 17 A. "We acknowledge that there are disallowed expenses and they
- do go back to year one, but they primarily come from two
- 19 sources. First, Dr. Karron was trying to do the bookkeeping
- 20 himself and he is not an accountant, mistakes were made.
- 21 Secondly, there were differing opinions on what is and isn't
- 22 allowable between the prior administrators of the CA and those
- 23 now administering the CA."
- Q. What was the CA?
- 25 A. That's the grant.

8697KAR2 Benedict - direct

1 Q. That first sentence, "We acknowledge that there are

- disallowed expenses and they do go back to year one, "who wrote
- 3 that sentence?
- 4 A. I did.
- 5 Q. What about the second two sentences, Dr. Karron was trying
- 6 to do the bookkeeping himself, he is not an accountant,
- 7 mistakes were made and there were differing opinions about what
- 8 is and isn't allowable between the prior administrator of the
- 9 CA and those now administering the CA?
- 10 A. Those were added by Dr. Karron.
- 11 THE COURT: What did you say were added?
- 12 THE WITNESS: The second and the third sentence.
- THE COURT: "Secondly" or "first"?
- 14 THE WITNESS: "First" and "secondly".
- 15 Q. As for the first sentence which you wrote, why did you
- 16 write that sentence?
- 17 A. Because I wanted the ATP --
- 18 MR. RUBINSTEIN: I object to the why questions.
- 19 Q. What was the purpose for including that sentence?
- 20 MR. RUBINSTEIN: Objection, your Honor. It speaks for
- 21 itself.
- THE COURT: I will allow the answer.
- This is the sentence "we acknowledge"?
- 24 A. The letter as I originally wrote it started "Miss Snowden,
- 25 we acknowledge there are disallowed expenses and they do go

8697KAR2 Benedict - direct

1 back to year one." What I wanted them to understand was that

- there were disallowed expenses in addition to the fact that
- 3 there was no match. I was trying to get ATP's attention.
- 4 MR. RUBINSTEIN: Could we have the date of this
- 5 exhibit, your Honor?
- 6 THE COURT: Sorry?
- 7 MR. RUBINSTEIN: The date.
- 8 THE COURT: The date on the letter is August 13,
- 9 according to the copy.
- MR. RUBINSTEIN: 2003. Thank you.
- 11 THE COURT: All right.
- 12 Q. You can put down the letter. Mr. Benedict, are you
- familiar with someone named Joan Hayes?
- 14 A. Yes, sir.
- 15 Q. Who is Joan Hayes?
- 16 A. Joan Hayes was the auditor employed by CASI.
- 17 Q. Did you ever have any discussions with the defendant
- 18 regarding Joan Hayes?
- 19 A. Yes.
- 20 Q. What were those discussions?
- 21 A. Dr. Karron was generally not happy with Joan Hayes. He
- 22 felt that she just wasn't doing what he wanted her to do.
- 23 Q. And did he say that to you?
- 24 A. Yes, sir.
- 25 Q. What ultimately happened to the grant?

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 A. The grant was suspended.
- 2 Q. And after the grant was suspended did you have any
- 3 discussions with the defendant about the state of the project?
- 4 A. Yes, sir, I did.
- 5 Q. What was the nature of those discussions?
- 6 A. As the audit progressed it became apparent that the
- 7 disallowed numbers and the questioned numbers were going to be
- 8 very large. I had told Dr. Karron that this was very serious.
- 9 MR. RUBINSTEIN: I object to what he told Dr. Karron.
- 10 THE COURT: Are you referring to an audit by Joan
- 11 Hayes or an audit by Belinda --
- 12 THE WITNESS: By Belinda Riley.
- 13 THE COURT: -- by Belinda Riley?
- 14 Is that what you're inquiring about, Mr. Everdell?
- MR. EVERDELL: Yes.
- 16 Q. All right. So, you are familiar with someone named Belinda
- 17 Riley?
- 18 A. Yes, sir.
- 19 Q. Who is Belinda Riley?
- 20 A. Belinda Riley is the Office of Inspector General's auditor.
- 21 Q. And did she complete an audit report?
- 22 A. Yes.
- Q. Did you discuss that report with Dr. Karron?
- 24 A. Yes, sir, I did.
- Q. And what did you tell him, if anything?

SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 A. I told Dr. Karron this was very serious, he could go to
- jail for this, he could have between 300 and 500,000 of
- 3 disallowed expenditures.
- 4 Q. What if anything was the defendant's response to that?
- 5 A. He said don't worry about it, my mom's got it.
- 6 MR. EVERDELL: No further questions, your Honor.
- 7 THE COURT: All right, Mr. Rubinstein.
- 8 CROSS EXAMINATION
- 9 BY MR. RUBINSTEIN:
- 10 Q. Good morning, Mr. Benedict.
- 11 A. Good morning.
- 12 Q. Now, Exhibit 48 that was just shown to you, the letter that
- 13 you wrote to Hope Snowden --
- 14 A. Yes, sir.
- 15 Q. -- that was written by you, right?
- 16 A. By myself and Dr. Karron.
- 17 Q. Was it written in conjunction with Joan Hayes?
- 18 A. No, sir.
- 19 Q. How did you send that letter to Hope Snowden?
- 20 A. Mailed it.
- 21 Q. Did you fax it to Hope Snowden?
- 22 A. No, sir, I didn't.
- Q. Well, did Joan Hayes fax it to Hope Snowden?
- 24 A. I don't know whether she did or she didn't, sir. She is on
- 25 copy of the letter.

8697KAR2

Benedict - cross

- 1 Q. Now, in fact you advised Dr. Karron in August of 2003 that
- 2 the financial disallowances pursuant to the audit were very
- 3 serious, correct?
- 4 A. Yes, sir.
- 5 Q. And in August of 2003, this is after the grant was
- 6 suspended, right?
- 7 A. Yes, sir.
- 8 Q. And that is the first time that you ever told Dr. Karron
- 9 that it's possible he could even go to jail for this, right?
- 10 A. That's possible, yes, sir.
- 11 Q. His response was he didn't think that was possible, right?
- 12 A. I told you what his response was. He said don't worry
- 13 about it.
- Q. He felt that if you paid back the money there is no
- 15 problem.
- 16 A. I don't know what he felt, sir. He didn't say that to me.
- 17 Q. Well, didn't he tell you that his mom has the money?
- 18 A. Yes, sir, but Dr. Karron often gave me very flippant
- 19 answers.
- 20 Q. But he did say that his mom had the money, correct?
- 21 A. Yes, sir.
- 22 Q. Now, you were called a number of times prior to the time
- 23 that you became the grant manager, the business manager
- 24 actually of this CASI grant, correct?
- 25 A. Yes, sir.

- 1 Q. Prior to that time how many calls would you say you got
- 2 from members of CASI asking your advice and your opinion on
- 3 allowable expenses?
- 4 A. Four maybe.
- 5 Q. And you spoke to Dr. Karron himself, correct?
- 6 A. Yes, sir.
- 7 Q. And he spoke to you about the rent, right?
- 8 A. Yes, sir.
- 9 Q. He also spoke to you about utilities expenses, correct?
- 10 A. I don't recall, sir.
- 11 Q. Did you ever in those conversations before you came to be
- 12 employed by CASI ever say to Dr. Karron, you know, if you do
- this you might wind up in jail?
- 14 A. No.
- 15 Q. Now, it is a fact, sir, that Dr. Karron had project
- 16 administrators, did he not, prior to you?
- 17 A. Yes, sir.
- 18 Q. He had Lee Gurfein, right?
- 19 A. Yes, sir.
- Q. You spoke to that gentleman?
- 21 A. Yes, sir.
- 22 Q. He called you for advice?
- 23 A. Yes.
- Q. He had Peter Ross?
- 25 A. I never spoke with Peter Ross.

8697KAR2 Benedict - cross

1 Q. Are you aware that Peter Ross is the individual who

- 2 preceded you?
- 3 A. I learned that after I joined CASI, yes, sir.
- 4 Q. So is it fair to say that the statement that you have -- by
- 5 the way, you authored this letter, correct?
- 6 A. Yes, sir.
- 7 Q. You put your signature on it.
- 8 A. Yes, sir.
- 9 Q. Are you telling this jury that you lied to Hope Snowden in
- 10 this letter?
- MR. EVERDELL: Objection.
- 12 THE COURT: I will allow the question.
- 13 A. No, sir.
- 14 Q. And Dr. Karron indicated to you that he had prior project
- 15 administrators who didn't understand the ATP guidelines and
- 16 cost principles, correct?
- 17 A. Yes, sir. But I know that ATP isn't going to pay any
- 18 attention to that because ignorance isn't an answer.
- 19 Q. But you knew that there was a lot of ignorance here in
- 20 CASI, did you not?
- 21 A. Yes, sir.
- 22 Q. And when you first met Dr. Karron, the first thing he did
- 23 before you ever met him was stand up in an open meeting and
- 24 said he needs help on the financial side, understanding the
- 25 financial side, correct?

- 1 A. Yes, sir.
- 2 Q. Now --
- 3 THE COURT: What year was that?
- 4 THE WITNESS: 2001.
- 5 MR. RUBINSTEIN: 2001 at a NIST --
- 6 THE COURT: In the spring?
- 7 THE WITNESS: Yes, sir.
- 8 THE COURT: Is that before -- in the spring? All
- 9 right.
- 10 THE WITNESS: Yes, sir.
- 11 Q. And, by the way, these project administrators, at least
- 12 Gurfein, is somebody that was calling you for guidance,
- 13 correct?
- 14 A. Yes.
- 15 Q. Did you ascertain that in the very beginning of CASI that
- 16 Dr. Karron was in fact doing the bookkeeping himself?
- 17 A. After I got there, yes, sir.
- 18 Q. And in fact he is not an accountant, right?
- 19 A. That's correct.
- 20 Q. And that' what you're telling us he asked you to
- 21 incorporate in this letter, right?
- 22 A. Yes, sir.
- 23 Q. That's true, right?
- 24 A. Yes, it is.
- 25 Q. And in fact there were differing opinions on what is

SOUTHERN DISTRICT REPORTERS, P.C.

8697KAR2 Benedict - cross

- 1 allowable and what wasn't allowable, correct?
- 2 MR. EVERDELL: Objection.
- 3 THE COURT: Objection sustained.
- 4 Q. Well, you had differences of opinion with Dr. Karron as to
- 5 what was allowable and what was unallowable, correct?
- 6 A. Yes, sir.
- 7 Q. And in fact CASI, prior to the appearance of Belinda Riley,
- 8 you were attempting to get all the books straightened out, were
- 9 you not?
- 10 A. Yes, sir.
- 11 Q. You were in the process of doing that, correct?
- 12 A. Yes, sir.
- 13 Q. And your experience with NIST ATP was based upon your
- 14 background with IBM and this company Complex, right?
- 15 A. Yes.
- 16 Q. How large a company is Complex?
- 17 A. Say again?
- 18 Q. How large a company is Complex?
- 19 A. You mean the consortium?
- 20 Q. Well, you said you worked for Complex. Is that a
- 21 consortium? I don't know.
- 22 A. I didn't say anything about a complex. I worked for IBM
- 23 managing single grants and consortium grants. The consortium
- grants are multi-company grants.
- 25 Q. And did you work on grants for anybody else?

- 1 A. Axiom.
- 2 Q. Axiom. I'm sorry. And how large a company is Axiom?
- 3 A. Axiom is a relatively small software development company
- 4 that worked with IBM.
- 5 Q. When you say relatively small, how many employees did Axiom
- 6 have?
- 7 A. 250.
- 8 Q. 250 employees?
- 9 A. Um-hum.
- 10 Q. And Axiom, what kind of grant did they get?
- 11 A. They didn't have a grant. I was a consultant working for
- 12 them, and they hired me out to IBM. So all of my grant
- 13 experience is related to IBM experience -- or ATP experience
- 14 was all related to IBM projects.
- 15 Q. Without being facetious, IBM is a giant company, right?
- 16 A. Yes, sir.
- 17 Q. Now, were you the sole -- were you the business manager for
- 18 IBM dealing with the grants?
- 19 A. Yes, sir.
- 20 Q. And what kind of grants did IBM get?
- 21 A. Software development, high-risk software development
- 22 grants.
- 23 Q. And what dollar amount?
- 24 A. The first one was the same size as Dr. Karron's. The last
- two were 24 and \$26 million grants.

8697KAR2 Benedict - cross

- 1 Q. Now, the first one is what is called a single grant?
- 2 A. Yes.
- 3 O. And the others were consortium, which meant those grants
- 4 involved more than one company?
- 5 A. Yes, sir.
- 6 Q. Now, in your single grant, did you write the budget for
- 7 that grant?
- 8 A. No, sir, I did not.
- 9 Q. Did you ever have -- was the budget in place when you
- 10 became the grant manager?
- 11 A. Yes, sir, it was.
- 12 Q. And that's the only budget, single grant budget, dealing
- 13 with NIST ATP. Was that -- I'm sorry. Was that the only
- 14 single grant budget from ATP NIST?
- 15 A. Yes, sir.
- 16 Q. That you ever worked on?
- 17 A. Yes, sir.
- 18 Q. In that budget were you paid? Was IBM paid up front? Did
- 19 they have the grant money up front, or did they have to be
- 20 reimbursed?
- 21 A. Reimbursement.
- 22 Q. So that IBM would have to spend their money first, right?
- 23 A. Yes.
- MR. EVERDELL: Objection.
- 25 THE COURT: Objection sustained. When you start with SOUTHERN DISTRICT REPORTERS, P.C.

- 1 "so" --
- 2 MR. RUBINSTEIN: All right.
- 3 Q. IBM spent their money first, correct?
- 4 A. Yes, sir.
- 5 Q. Then would it be your job to request reimbursement from the
- 6 grant?
- 7 A. Yes, sir.
- 8 Q. And how would you do that?
- 9 MR. EVERDELL: Objection. Relevance.
- 10 THE COURT: I'm going to allow the question.
- 11 A. I would submit a report to ATP asking them for
- 12 reimbursement based on the detailed expenditures I reviewed.
- 13 Q. And were you ever turned down?
- 14 A. No, sir.
- 15 Q. Now, when you were doing the consortium projects, was that
- 16 a reimbursement also situation?
- 17 MR. EVERDELL: Objection.
- 18 THE COURT: Objection overruled.
- 19 A. Yes.
- 20 Q. And did you submit the reports requesting reimbursement?
- 21 A. Yes.
- 22 Q. And, by the way, how much of the 2 million that IBM
- 23 received in the first grant, the single grant, was actually --
- 24 I will withdraw that.
- 25 How many years was that grant for, the first grant?

 SOUTHERN DISTRICT REPORTERS, P.C.

- 1 A. Two.
- 2 Q. Two years?
- 3 A. Yes, sir.
- 4 Q. For \$2 million?
- 5 A. Yes, sir.
- 6 Q. And how much of the 2 million did IBM spend?
- 7 A. All of it.
- 8 Q. And the two consortium grants, those were for 24 million a
- 9 piece?
- 10 A. 24 and 26.
- 11 Q. And how much of the \$24 million grant did IBM spend, the
- 12 consortium?
- 13 A. The consortium spent all of the money.
- 14 Q. And how about the \$26 million grant, how much did the
- consortium spend on the 26 million grant?
- 16 A. They spent all the money.
- 17 Q. When you would submit a document to ATP, were any of the
- 18 reimbursed expenditures ever rejected?
- MR. EVERDELL: Objection.
- 20 THE COURT: Objection overruled. Can I hear the
- 21 question again?
- 22 A. I don't recall any being rejected.
- 23 Q. What years were this that you were dealing with NIST ATP on
- these grants?
- 25 A. 1994 to 2002.

8697KAR2 Benedict - cross

1 Q. Now, did you ever have occasion to speak to any of the

- 2 grant administrators from ATP?
- 3 A. Yes, sir.
- 4 Q. And who did you speak to? I am talking on behalf of the
- 5 IBM grants. Did you ever have occasion to speak to any of the
- 6 administrators?
- 7 MR. EVERDELL: Objection.
- 8 THE COURT: Objection sustained.
- 9 Q. Did you ever have occasion to submit any budget revisions
- on behalf of any of the IBM grants?
- MR. EVERDELL: Objection.
- 12 THE COURT: I will allow the question.
- 13 A. Yes.
- 14 Q. What kind of budget revisions did you request?
- 15 A. As the projects proceeded, you learn your initial budget
- 16 doesn't have all the money in all the right places, and so you
- 17 request movement of the money from one budget line to another
- 18 budget line. I don't specifically recall any of the details,
- 19 but, yes, they occurred.
- 20 Q. That's a common thing in these kind of high-tech, high-risk
- 21 types of grants, right?
- 22 A. Yes.
- 23 Q. Now, you were involved, were you not, in CASI's original
- 24 budget submission?
- 25 A. No.

- 1 Q. Well, did you discuss with Dr. Karron the original budget
- 2 that he was submitting?
- 3 A. No.
- 4 Q. In fact you were never approved by ATP NIST for the CASI
- 5 project.
- 6 A. I found that out later, yes, sir.
- 7 Q. When did you find that out?
- 8 A. During the audit by OIG, by Belinda Riley.
- 9 Q. You were never formally rejected, correct?
- 10 A. Correct.
- 11 Q. And isn't it a fact that ATP wouldn't speak to you before
- 12 Belinda Riley showed up because you were not approved by them?
- 13 A. They did not return phone calls.
- 14 Q. But you did call them before the grant was suspended on
- 15 June 27, correct.
- 16 A. Yes, sir.
- 17 Q. And after the grant was suspended you learned from Riley
- 18 that you were not approved, correct?
- 19 A. Yes.
- 20 Q. And when would you say that was in time frame?
- 21 A. July/August sometime.
- 22 Q. Had you received any remuneration, any payment from CASI
- for the work you had done as manager?
- 24 A. Yes.
- Q. And in fact Dr. Karron brought you aboard and told you when SOUTHERN DISTRICT REPORTERS, P.C.

1 you came aboard he needed somebody who really knew what they

- were doing?
- 3 A. Yes.
- 4 Q. And did you help early on? Before were you actually hired,
- 5 when you were getting these calls from CASI, did you recommend
- 6 that any category be added to the budget called "others"?
- 7 A. I don't recall anything like that, no, sir.
- 8 THE COURT: For what? For other?
- 9 MR. RUBINSTEIN: "Others".
- 10 Q. That is a category in the budget, is that correct?
- 11 A. No, sir, not as far as I know it isn't.
- 12 Q. Now, you say you were getting \$60 an hour, correct?
- 13 A. Yes, sir.
- 14 Q. Were you aware what Lee Gurfein was being paid?
- 15 A. No, sir.
- 16 Q. Did you become aware of what Lee Gurfein had been paid?
- 17 A. No, sir.
- 18 Q. Did you ever say to Dr. Karron that what CASI paid Lee
- 19 Gurfein was insane?
- 20 A. I don't recall, no, sir.
- 21 Q. Well, did you have occasion as the manager -- you submitted
- 22 revisions, did you not?
- 23 A. Yes, sir.
- Q. Revisions for the whole budget, correct?
- 25 A. We submitted a budget amendment, yes.

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 Q. Did you review the prior budgets?
- 2 A. The only prior budget that I saw was the one that was
- 3 originally filed with the grant.
- 4 Q. And that had a salary for Lee Gurfein, did it not?
- 5 A. Yes.
- 6 Q. Are you telling this jury that you didn't notice what
- 7 Mr. Gurfein was being paid?
- 8 THE COURT: Objection to the form of the question.
- 9 MR. EVERDELL: Objection.
- 10 THE COURT: He didn't say he didn't notice.
- 11 Q. Well, did you see in that budget --
- 12 THE COURT: He said he never made the statement to Dr.
- 13 Karron is what he said.
- 14 Q. Well, did you see in that budget what Lee Gurfein was being
- 15 paid?
- 16 A. Yes, I saw what he was being paid.
- 17 Q. And how much was Gurfein being paid?
- 18 A. I don't recall.
- 19 Q. After you saw that, did you ever have any conversation with
- 20 Dr. Karron as to the amount that they were paying Lee Gurfein?
- 21 A. No, sir, not to my memory I don't.
- 22 Q. Did you discuss with Dr. Karron the 10 percent rule?
- 23 A. Yes.
- 24 Q. And did you advise him that it's really a 20 percent rule,
- that you can add 10 percent if you take 10 percent off?

8697KAR2 Benedict - cross

- 1 A. I don't understand the question.
- Q. Well, the 10 percent rule permits you, does it not, sir, to
- 3 increase any line in the budget by 10 percent?
- 4 A. Yes, it's a plus or minus 10 percent rule.
- 5 Q. So you would have to reduce by 10 percent in order to
- 6 increase by 10 percent?
- 7 A. Yes, sir. You weren't going to get any more money.
- 8 Q. The dollar amount, in this case \$800,000 for the first
- 9 year, was your sealing, top amount.
- 10 A. Yes.
- 11 Q. So, in effect it really was 10 percent up and 10 percent
- down; you wound up with the same dollar amount budget.
- 13 A. Yes. You can go plus or minus 10 percent on any budget
- line without getting a budget amendment.
- 15 Q. And are you familiar with whether or not there are special
- 16 conditions that are sometimes imposed by ATP as part of the
- 17 grant?
- 18 A. There are sections in grants that are called special terms
- 19 and conditions. I don't recall what they were, if there were
- any with Dr. Karron's grant.
- 21 Q. Well, you told us that you recommended that Dr. Karron get
- 22 grant manager training?
- 23 A. Yes.
- Q. You sent him a catalog, right?
- 25 A. Yes.

- 1 Q. Did you also suggest that the people who work for him in
- 2 the administration do the same?
- 3 A. Yes.
- 4 Q. And you learned in fact that neither Dr. Karron nor anyone
- 5 in the administration took the course, correct?
- 6 A. That's correct.
- 7 Q. And did Dr. Karron advise you that he would rely upon his
- 8 network of assistants to get him through the grant process?
- 9 Right?
- 10 A. I don't recall that comment, no, sir.
- 11 Q. Well, when did you speak to somebody involved in the
- 12 prosecution in this case?
- 13 A. Could you repeat the question, please.
- 14 Q. Yes. When were you first approached by anybody at that
- 15 first table about this case?
- 16 A. Two years ago?
- 17 Q. And who were you approached by?
- 18 A. Agent Ondrik.
- 19 Q. Do you see that agent here?
- 20 A. Yes. She is sitting over there at the table. Kirk was
- 21 also there. He's sitting at the end of the table.
- 22 Q. And how about the prosecutors here, when did you meet the
- 23 prosecutors for the first time?
- 24 A. Two months ago.
- 25 Q. 2008, correct?

- 1 A. Yes, sir.
- Q. Do you recall telling the agents that instead he, meaning
- 3 Dr. Karron, depended on his network of associates to get him
- 4 through the process?
- 5 A. Dr. Karron would --
- 6 Q. Do you recall saying that to the agents here under oath?
- 7 A. Not specifically, no, sir.
- 8 Q. OK. Let me show you this document which has been
- 9 previously marked as 3506-A and ask you first to look at the
- 10 top on the back, and then I will direct you to a specific place
- in the document. Did you review that, sir?
- 12 A. Number 3?
- 13 Q. Well, first of all, did you review the fact that that's an
- 14 affidavit that you signed and swore to?
- 15 A. Yes it is. Yes, sir.
- 16 Q. And you read it before you swore to it?
- 17 A. Yes, sir, I did.
- 18 Q. And you initialed every page?
- 19 A. Yes, sir.
- 20 Q. I direct your attention to what I have as number three and
- 21 ask you if that refreshes your recollection that Dr. Karron
- 22 told you he depended on a network of associates to get him
- 23 through the process.
- 24 A. That's not what he told me, sir. It's what he did.
- 25 (Continued on next page)

869zkar3 Benedict - cross

- 1 BY MR. RUBINSTEIN:
- Q. You observed that, that he relied upon other people to get
- 3 him through the process?
- 4 A. Dr. Karron would ask a question. If he got an answer he
- 5 didn't like, he'd ask somebody else until he got something that
- 6 was close to what he wanted, and he would go in that direction.
- 7 O. And had you, in your prior experience with ATP NIST, ever
- 8 have occasion on, aside from CASI, of negotiating as to what
- 9 was allowable or allowed; did your have that occasion,
- 10 experience?
- 11 A. Yes, sir.
- 12 Q. Now, somebody did take that course that you recommended,
- 13 right?
- 14 A. Yes.
- 15 Q. And that was Joan Hayes, right?
- 16 A. Yes.
- 17 Q. And who paid for that course?
- 18 A. I have no idea, sir.
- 19 Q. Are you aware that whether or not CASI paid for that course
- 20 for Joan Hayes?
- 21 A. I have no recollection of that, sir. Joan Hayes was a CASI
- 22 employee, not an ATP employee. What CASI did with CASI's
- 23 money, I didn't care.
- Q. She was their accountant, she was CASI's accountant?
- 25 A. She was CASI's accountant CPA, auditor.

869zkar3 Benedict - cross

1 Q. She was wearing multiple hats for CASI, correct?

- 2 MR. EVERDELL: Objection.
- 3 THE COURT: Objection sustained.
- 4 O. Well --
- 5 THE COURT: Let's --
- 6 Q. If Dr. Karron -- when you recommended to Dr. Karron that he
- 7 or somebody in CASI take this course on auditing -- it was kind
- 8 of an auditing course for the budget?
- 9 A. The courses that are offered by management concepts cover a
- 10 number of subjects. One is the A-133 audit, which is the
- 11 federal government auditing process. There were courses on
- 12 grant management, there were courses on grant writing. I mean,
- 13 they have a number of courses.
- 14 Q. So the person that went down for the course on grant
- management was the accountant, correct?
- 16 A. Yes, sir.
- Q. And that was prior to the time that you came aboard,
- 18 correct?
- 19 A. I don't know when she went.
- 20 Q. And is it your view that that would not, would not be an
- 21 allowable expense?
- 22 A. It's not an allowable expense to the grant, no, sir.
- 23 Q. Did you ever discuss that with anybody at ATP?
- 24 A. No, sir.
- 25 O. Did Mark Stanley speak at the conference where you met Dr.

- 1 Karron?
- 2 A. I don't recall if he spoke at that conference or not; no,
- 3 sir.
- 4 Q. Have you been present when Mark Stanley spoke to grant, to
- 5 hopeful grant recipients?
- 6 A. Yes.
- 7 Q. And it's fair to say that Mark Stanley said that they would
- 8 attempting to, to help anybody who got a grant?
- 9 MR. EVERDELL: Objection.
- 10 A. I don't specifically recall him making that comment.
- 11 Q. Well, did you advise Dr. Karron that NIST ATP was one of
- 12 the most friendly organizations to the recipients?
- 13 A. That was my experience.
- 14 Q. And --
- 15 THE COURT: Did you tell him?
- 16 THE WITNESS: I don't recall making that, that
- 17 statement.
- 18 Q. Did you advise Dr. Karron that there is always a way to get
- 19 amendments; did you advise Dr. Karron of that?
- 20 A. I don't understand the question.
- 21 Q. There's always a way for an expense to be considered, to be
- 22 allowable?
- 23 A. I don't recall that statement. That would seem to be too
- 24 broad.
- Q. Are you familiar with types of equipment that Dr. Karron SOUTHERN DISTRICT REPORTERS, P.C.

869zkar3 Benedict - cross

- 1 had in the NIST ATP project?
- 2 A. I was familiar to the extent that they were large and very
- 3 powerful pieces of equipment. Other than that, I don't know.
- 4 I'm not a technologist.
- 5 Q. And are you aware that you could revise the budget after
- 6 the year was up?
- 7 A. After what year was up?
- 8 Q. Well, in this case CASI had a budget for -- starting
- 9 October 1st, 2001 running till September 30th, 2002, correct;
- 10 first year of the grant?
- 11 A. Yes.
- 12 Q. And that had you had to reapply for the second -- did you
- have to reply for the second year?
- 14 A. No, sir.
- 15 Q. It was automatic?
- 16 A. It was a two year grant.
- 17 Q. Isn't it a fact this was a three year grant?
- 18 A. Three year grant. I don't recall whether it's two or
- 19 three.
- Q. IBM was a two year grant?
- 21 A. Yes.
- 22 Q. Now, is there any review after the first year by, that
- 23 you're aware of, by ATP NIST of the grant people, the CASI?
- MR. EVERDELL: Objection.
- 25 THE COURT: I'll allow the question. I'd like a time SOUTHERN DISTRICT REPORTERS, P.C.

- 1 frame, though, Mr. Rubinstein.
- 2 MR. RUBINSTEIN: Okay. I'll withdraw the question,
- 3 Judge, even though you allowed it.
- 4 Q. Are you aware that after the first year of the grant, you
- 5 are required to submit an audit?
- 6 A. I don't remember if that was a specific requirement of this
- 7 grant or not.
- 8 Q. Well, are you aware as to whether or not you can, after the
- 9 year is over, in other words subsequent to September 30th,
- 10 2002, whether or not you could request a budget revision for
- 11 the year 2000 -- October 1, 2001, to September 30th, 2002?
- 12 A. My experience with ATP grants is that you have a three year
- 13 budget. You may or may not spend everything in year one. You
- 14 can do budget amendments as you need them.
- 15 Q. Could you -- you told us before about as you go on in your
- 16 grants you learn that you may have needs for more money in one
- 17 line item than another item, correct?
- 18 A. Yes, sir.
- 19 Q. You might even need an additional line item that you didn't
- 20 have before, correct?
- 21 A. Yes, sir.
- 22 Q. The question is, after you finish your first year, do you
- 23 know whether or not if you check over your actuals, what you
- 24 really spent and what you really spent it on, whether you can
- 25 have your first year budget revised to reflect that?

869zkar3 Benedict - cross

- 1 A. I don't believe so.
- Q. Well, let me show you what's -- well, you're not sure?
- 3 A. No, I'm not.
- 4 Q. Let me show you what's in evidence as government Exhibit 4,
- 5 page 11.
- 6 MR. RUBINSTEIN: Could you put that up on the board,
- 7 please?
- 8 Q. Were you ever present at a kickoff meeting with people from
- 9 NIST ATP where they -- were you ever present at such a --
- 10 A. Yes, sir, I've been present at kickoff meetings, ATP
- 11 kickoff meetings.
- 12 Q. Okay. And did they give you a lot of material when you go
- 13 there?
- 14 A. Yes.
- 15 Q. And how voluminous is the material that they give you.
- 16 A. I don't recall.
- 17 Q. Could you show us with your hands as to how -- do they give
- 18 you the CFR?
- 19 THE COURT: Witness has indicated about an inch thick.
- 20 A. No. They gave us the CFR numbers, told us where to go and
- 21 look.
- Q. You have to go look yourself in the CFR?
- 23 A. Yes.
- Q. And you see what's on that recipient responsibility?
- 25 A. Yes.

- 1 Q. And you see the second portion?
- 2 MR. EVERDELL: Your Honor, objection. He wasn't at
- 3 the kickoff meeting for this grant.
- 4 BY MR. RUBINSTEIN:
- 5 Q. Well, does that refresh your recollection by looking at
- 6 that, that in fact you could revise a budget after the end of
- 7 each year?
- 8 A. I don't recall that slide, but -- what I believe they're
- 9 saying there, though, is is as you go forward, you revise the
- 10 three year budget, so that it now lines up with what you have
- 11 to do going forward, not that you go back and revise what's
- 12 already happened, budget wise.
- 13 Q. What did you do at IBM if you had an item that you spent
- 14 less money on during the year? You said you spent the million
- dollars the first year, right, out of the million?
- 16 A. I don't recall what we spent the first year.
- 17 Q. Well, did you testify before, you spent the whole million?
- 18 A. I testified that we spent all the money in the grant.
- 19 Q. Okay.
- 20 A. I didn't testify that we spent it by year.
- 21 Q. Did the line items -- did you have any changes in the line
- 22 items?
- 23 A. Yes, sir.
- 24 Q. And when would you submit those changes in line items?
- 25 A. We would submit them as we understood what we had to do to SOUTHERN DISTRICT REPORTERS, P.C.

869zkar3 Benedict - cross

1 go forward, and then we would make the changes to the budget.

- 2 So what we would take the -- what we didn't spend in the prior
- 3 year on a specific line, and roll it to another line in the --
- 4 going forward.
- 5 Q. And Dr. Karron advised you, when you were hired, that he
- 6 had problems with his prior grant administrators, correct?
- 7 A. Yes, sir.
- 8 Q. And the submission -- excuse me. And Dr. Karron wanted you
- 9 to submit as part of your revision 100 page, 100 additional
- 10 pages, correct?
- 11 A. I don't know how many pages were, but it was a significant
- 12 volume of documents, stating technical references and such.
- 13 They really didn't have anything to do with the budget itself.
- 14 Q. Why don't you take a look at page two of the document that
- 15 I gave you and see if that refreshes your recollection as to
- 16 the size?
- 17 THE COURT: Page two of what document?
- MR. RUBINSTEIN: 3506A.
- 19 A. Yes, sir.
- 20 THE COURT: Are you going to show that to him?
- 21 THE WITNESS: I have it.
- 22 THE COURT: You have it?
- THE WITNESS: It's here.
- 24 THE COURT: Oh.
- 25 Q. You see the first full paragraph?

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- 1 A. Yes.
- 2 Q. And, in fact, he wanted you to include in excess of a
- 3 hundred pages --
- 4 A. Yes.
- 5 Q. -- to justify the budget?
- 6 MR. EVERDELL: Objection. He's reading from the
- 7 document that's not in evidence.
- 8 THE COURT: I'm sorry?
- 9 MR. EVERDELL: He's reading from a document not in
- 10 evidence.
- 11 THE COURT: Yes, objection sustained.
- 12 Q. Well, is it a fact that you testified on direct as to
- 13 discussions with Dr. Karron about the submission of this
- 14 revised budget once you came aboard, correct?
- 15 A. Yes.
- 16 Q. And Dr. Karron suggests that you include in excess of 100
- pages of backup to the budget revision request?
- 18 A. He provided the pages. He did all that work.
- 19 Q. And were you able to convince him to reduce the number of
- 20 pages that you submitted?
- 21 A. Not by much.
- Q. He did reduce the pages, correct?
- 23 A. Yes, sir.
- Q. And your feeling was that ATP wouldn't even look at all
- those pages, so there was no sense in submitting them, correct?

869zkar3 Benedict - cross

1 A. Sir, this was a budget amendment. It wasn't a technical

- 2 amendment. It was -- he wasn't changing the technical
- 3 direction of his project, and submitting all that technical
- 4 data to the budget people would make them wonder what we're
- 5 doing.
- 6 Q. You thought that it might raise a red flag that people
- 7 didn't know what they were doing at CASI?
- 8 A. Yes.
- 9 Q. By submitting this kind of provision --
- MR. EVERDELL: Objection.
- 11 Q. -- right?
- 12 MR. EVERDELL: Objection.
- 13 THE COURT: Well, I'll allow the question if you want
- 14 to ask it, Mr. Rubinstein.
- 15 Q. In fact, you were concerned that the revision would be
- 16 rejected just on the form of the submission?
- 17 A. I was concerned that it would be slowed down in the
- 18 process. I was not concerned that they would reject it out of
- 19 hand.
- 20 Q. Isn't it a fact that you indicated to Dr. Karron that the
- 21 prior revision request appeared -- would appear -- appeared to
- 22 ATP that CASI didn't know what they were doing?
- 23 A. I don't recall that.
- Q. Why don't you look at page two of your affidavit, 3506A,
- and take a look at the second full paragraph.

- 1 A. Yes.
- Q. And does that refresh your recollection as to telling Dr.
- 3 Karron that the prior multiple budget revisions appeared to ATP
- 4 like CASI didn't know what they were doing?
- 5 (Pause)
- 6 A. I was concerned that the ATP financial team would not be
- 7 able to get through all of the technical babble.
- 8 Q. Now, when you weren't getting responses from ATP from your
- 9 inquiries, did you ask whether or not you had been approved?
- 10 A. I called ATP to ask about the status of the budget
- amendment and did not receive any response.
- 12 Q. And you knew that in their budget amendment was a request
- 13 to have you replace the position that had originally been
- 14 occupied by Lee Gurfein, correct?
- 15 A. Yes, sir.
- 16 Q. And it's fair to say that you felt your credentials
- 17 supported your being approved for the position, right?
- 18 MR. EVERDELL: Objection.
- 19 THE COURT: Objection overruled.
- 20 A. I -- yes.
- 21 Q. Did this raise a red flag in your mind as to that there
- 22 were problems here at CASI?
- THE COURT: That what?
- MR. EVERDELL: Objection.
- Q. The fact that nobody would speak to you as the business SOUTHERN DISTRICT REPORTERS, P.C.

869zkar3 Benedict - cross

- 1 manager for CASI from ATP?
- 2 A. It was not consistent with my experience, so I was
- 3 concerned that there was something going on, but I didn't know
- 4 what it was or -- whether it was related to CASI or something
- 5 going on at NIST.
- 6 Q. Did you speak to Dr. Karron about it?
- 7 A. Dr. Karron was aware that we had heard nothing.
- 8 Q. Did you ask him if he could call the people at ATP?
- 9 A. He -- I knew he was calling and talking to them.
- 10 Q. So because he reported that to you, he reported he was
- 11 speaking to the people at NIST?
- 12 A. Yes.
- 13 Q. Did you ask him, did you ask about my approval?
- 14 A. I don't recall that, no.
- 15 Q. Are you aware, sir, that if the budget -- you know that you
- 16 never got a budget revision approval, correct?
- 17 A. Yes, sir.
- 18 Q. And your approval was attached to the budget approval,
- 19 right?
- 20 A. Yes.
- 21 Q. So that if the budget wasn't approved, you had to know, did
- you not, then you weren't approved?
- 23 A. I didn't know whether the budget was approved or not. I
- 24 knew there was no response. I didn't have a yes, I didn't have
- 25 a no.

869zkar3 Benedict - cross

1 THE COURT: Is this a good place to break, Mr.

- 2 Rubinstein?
- 3 MR. RUBINSTEIN: Yes, your Honor.
- 4 THE COURT: Let's break for the morning break. Be
- 5 back between five and ten minutes.
- 6 (Jury exits the courtroom)
- 7 (In open court; jury not present)
- 8 THE COURT: Step down. You want an instruction, Mr.
- 9 Rubinstein?
- 10 MR. RUBINSTEIN: No. I want him to be careful when he
- 11 walks by. It seems like it's higher today than before, I.
- 12 MR. EVERDELL: You can wait in our witness room and
- 13 we'll call you.
- 14 THE COURT: You can use the men's room, and watch your
- 15 step.
- 16 MR. RUBINSTEIN: Judge in an abundance of caution, did
- we resolve the issue on the alterations in the apartment?
- 18 Because I have a -- I don't think we actually resolved that
- 19 issue. I have a witness related to it. I just want to make
- 20 sure that, you know.
- 21 THE COURT: Well, I asked you all to resolve the
- 22 issue.
- MR. RUBINSTEIN: Yes.
- 24 THE COURT: And, apparently, you couldn't reach a
- 25 resolution.

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869zkar3 Benedict - cross

- 1 MR. RUBINSTEIN: Right, all right.
- THE COURT: I suggested one, but I wasn't sure it met
- 3 with your approval.
- 4 MR. RUBINSTEIN: That was sort of my recollection,
- 5 but -- thank you.
- 6 THE COURT: I thought you could -- I thought your --
- 7 as I understand, your problem is that they use the term
- 8 alterations that what they use in their --
- 9 MR. RUBINSTEIN: Improvements.
- 10 THE COURT: You say site improvement is allowed.
- 11 MR. RUBINSTEIN: Yes, they use the word --
- 12 THE COURT: And you claim site improvement, they claim
- 13 it's, you know, an alteration to the --
- MR. RUBINSTEIN: Well --
- 15 THE COURT: I don't know whether it's site improvement
- or not. As I understand it, it's basically shelves.
- 17 MR. RUBINSTEIN: All right.
- 18 THE COURT: But they're not claiming -- they would
- 19 stipulate, as I understand it, that they're not making any
- 20 claim that it's improved the, whatever they were improved, the
- 21 value of the apartment --
- MR. RUBINSTEIN: Right.
- 23 THE COURT: -- for his personal benefit.
- MR. RUBINSTEIN: Right. Well, it's a very --
- 25 THE COURT: It's just that they were not allowed under

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869zkar3 Benedict - cross

- 1 the terms of the grant.
- 2 MR. RUBINSTEIN: Exactly, exactly.
- 3 THE COURT: I'd be glad to instruct them along those
- 4 lines. Your Honor, I think that's right as your Honor just
- 5 phrased it. We're not claiming that -- we're not taking a
- 6 position on how those improvements or renovations or
- 7 alterations current cost increased or decreased the value of
- 8 this, his property. All we're saying is that he used those, he
- 9 used grant funds to make those alterations.
- 10 Now, there may have been some business purpose that he
- 11 made these alterations; otherwise, he wouldn't have made it as
- 12 an economic rational being. But we're not saying that it
- increased the market value of his property, just like if you
- 14 paint your house black for some reason.
- 15 THE COURT: You're not saying also, as I understand
- 16 it, that there was -- that the only -- the only thing they're
- saying is, as I understand it, is that the alterations, the
- 18 cost of the alteration was not a reimbursable expense under the
- 19 grant.
- 20 MR. RUBINSTEIN: But they want to leave --
- 21 THE COURT: Now, you're saying there was site
- 22 improvement. I don't know what site improvement means, and I
- don't know whether what alterations mean. Obviously,
- 24 alteration could be site improvement, and --
- MR. RUBINSTEIN: Then I think I have to call the SOUTHERN DISTRICT REPORTERS, P.C.

869zkar3 Benedict - cross

1 witness. I think you're right, Judge; therefore, we're going

- 2 to call the witness.
- 3 THE COURT: I mean, it may be just a matter of
- 4 semantics and maybe it's not worth the government pressing the
- 5 issue. Maybe you can get --
- 6 MR. RUBINSTEIN: The witness won't be that long,
- 7 Judge.
- 8 THE COURT: All right.
- 9 MR. KWOK: Your Honor, before we rest and I guess
- 10 after we're done with this --
- 11 THE COURT: Putting all those computers into the
- 12 apartment would also probably diminish the market value of the
- 13 apartment. It just wouldn't make it easy to sell.
- 14 MR. RUBINSTEIN: We didn't have that problem because
- 15 the government came and removed everything, Judge.
- 16 THE COURT: In cross-examination, I can hear that
- 17 being beaten and brought up. Anyway.
- 18 MR. KWOK: Can we just move onto a different slightly
- 19 different issue your, Honor?
- THE COURT: Yes.
- 21 MR. KWOK: After we're done with this witness and
- 22 before the government rests, we intend to read a stipulation
- 23 that introduces into the record a disk provided by the
- 24 defendant which contains e-mails between Dr. Karron and others
- in the company, and we intend to --

869zkar3 Benedict - cross

1 THE COURT: I haven't seen that stipulation in the

- 2 issues submitted.
- 3 MR. KWOK: I think it's --
- 4 THE COURT: Is it an exhibit?
- 5 MR. KWOK: It's government exhibit 90 --
- 6 THE COURT: Government exhibit 90?
- 7 MR. KWOK: 902.
- 8 THE COURT: Oh 902. Well, 902 mentions Exhibit 1000.
- 9 I don't know anything about exhibit 1000.
- 10 MR. KWOK: That is actually the disk that I'm
- 11 referring to.
- 12 THE COURT: I don't know what was in 1000. You may
- have a lot of problems with 1000.
- 14 MR. KWOK: It's --
- 15 THE COURT: How am I going to rule on that? I mean
- 16 it's stipulated -- you stipulated it in, so I don't have to.
- MR. KWOK: We stipulated to it.
- 18 All I'm saying is we want to read that stipulation
- 19 into the record, and then publish a few of the e-mails
- 20 extracted from this disk to publish that to the jury. It's not
- 21 going to take very long. I hope it's going to be six, roughly
- 22 short.
- 23 THE COURT: If you're publishing e-mails, be sure you
- 24 give what comes before or what comes -- I mean you've got to --
- 25 MR. RUBINSTEIN: Well, they have to show me what

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869zkar3 Benedict - cross

- 1 the -- I stipulated this was --
- 2 THE COURT: You better show him what portions you're
- 3 going to if you're not going to publish the whole thing.
- 4 MR. KWOK: We will do that, we will.
- 5 THE COURT: You better agree on the portion you're
- 6 going to do.
- 7 All right, let's take our five minutes and get back.
- 8 The jury's had five minutes.
- 9 (Recess taken)
- 10 THE COURT: All right, let's bring in the witness -- I
- 11 mean the jury and the witness.
- 12 (Jury entering)
- 13 THE COURT: All right, please be seated.
- Mr. Rubinstein.
- 15 BY MR. RUBINSTEIN:
- 16 Q. Did you send an e-mail to Dr. Karron on April 19th, 2004
- 17 related to your experience at CASI?
- 18 A. I don't recall.
- 19 Q. Let me show you this document that's been marked as
- 20 defendant's U for identification?
- 21 THE DEPUTY CLERK: U as in under?
- MR. RUBINSTEIN: Right, Robert.
- THE COURT: What was the date?
- MR. RUBINSTEIN: April 19th, 2004.
- THE COURT: Thank you.

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1 (Pause while witness reviews document)

- 2 A. I've read it, yes.
- 3 Q. Did you send that to Dr. Karron?
- 4 A. It appears I did.
- 5 Q. And was it your evaluation of ATP that Hope Snowden was
- 6 only interested in whether --
- 7 MR. EVERDELL: Objection.
- 8 Q. -- CASI dotted all the I's and crossed all the T's?
- 9 MR. EVERDELL: He's reading from the document.
- 10 THE COURT: Objection sustained. It's not in evidence
- 11 yet.
- 12 MR. RUBINSTEIN: Okay. I would offer this into
- evidence, defendant's U.
- MR. EVERDELL: No objection, your Honor.
- 15 THE COURT: No objection? Exhibit U is admitted in
- 16 evidence.
- 17 (Defendant's Exhibit U received in evidence)
- 18 Q. Would you read -- this is prior to the time that you were
- 19 approached by the federal agents, correct?
- 20 A. Yes.
- Q. Would you read what's in evidence as defendant's U?
- 22 A. All of it?
- 23 Q. Yes, please.
- 24 A. As you know, one of my first acts was to assist in the
- 25 submission of the CASI response to the multi page questionnaire SOUTHERN DISTRICT REPORTERS, P.C.

869zkar3 Benedict - cross

1 tossed at CASI. This response included a budget and amendment,

- 2 along with a request to have immediate --
- 3 THE COURT: You have to slow down a little bit.
- 4 A. This response included a budget amendment, along with a
- 5 request to have me acknowledged as your administrator. Hope
- 6 ignored both requests. We never received any acknowledgment,
- 7 verbal or in writing, that our response amendment request would
- 8 or would not be approved.
- 9 As such, I was never approved as the administrator,
- 10 and Hope would not answer or return my phone calls. I was a
- 11 non-participant and, therefore, someone to be ignored.
- 12 The fact that I had eight years experience with ATP
- 13 projects as an administrator, without any audit problems, and a
- 14 litany of ATP references which Hope never bothered to check,
- 15 didn't appear to be viewed as a positive addition to the
- 16 project. The rare communications we did receive were addressed
- 17 to Dr. Karron or Peter Ross, ignoring the fact that ATP was
- informed Peter was no longer involved. It was very frustrating
- 19 and, apparently, in direct opposition to what would have been
- in the best interests of both CASI and NIST. Ms. Snowden
- 21 appeared to be a bureaucrat totally disinterested in the
- 22 success of the project and only interested in whether CASI
- 23 dotted all the I's and crossed all the T's, associated with a
- 24 rigid understanding of the ATP and other relevant federal
- 25 guidelines. She consistently ignored CASI attempts to provide SOUTHERN DISTRICT REPORTERS, P.C.

869zkar3 Benedict - cross

1 service which would help the project and her, in the meantime.

- 2 She believed CASI was out of control from the beginning, and
- 3 the number of personnel changes and amendment requests proved
- 4 her right in her mind. There was no way given to the
- 5 possibility that changes were driven by Dr. K's lack of ATP
- 6 experience or assistance offered to help Dr. Karron grapple
- 7 with the ATP quagmire.
- 8 ATP is as responsible for the state of the CASI
- 9 project as anyone. Sorry, but that's the best recollection I
- 10 can muster.
- 11 Q. Now, are you familiar with --
- 12 THE COURT: Now, this, apparently, has a -- this
- 13 exhibit contains more than just the e-mail of doctor -- of the
- 14 witness, Mr. Benedict. So is it going to be cropped in some
- 15 way?
- MR. RUBINSTEIN: Yes, your Honor. Yes.
- 17 THE COURT: So that it's one page?
- 18 THE WITNESS: Yes. This letter was in response to a
- 19 e-mail from Dr. Karron.
- THE COURT: No, never mind.
- 21 MR. EVERDELL: Your Honor, I think we need the full
- 22 e-mail for the understanding.
- THE COURT: What?
- MR. EVERDELL: I think we need the full understand --
- 25 THE COURT: You want it in?

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- 1 MR. EVERDELL: I'm sorry?
- 2 THE COURT: You want both e-mails in?
- 3 MR. RUBINSTEIN: No problem.
- 4 THE COURT: Both parties agree?
- 5 MR. RUBINSTEIN: If they want it in.
- 6 THE COURT: No objection?
- 7 MR. RUBINSTEIN: I have no objection.
- 8 THE COURT: All right. Then the entire exhibit will
- 9 be admitted in evidence. I just have to make sure that -- so
- 10 it contains two messages, all right.
- 11 Q. Mr. Benedict, do you know what sunk costs are?
- 12 A. Sunk?
- 13 Q. Yes, s-u-n-k costs?
- 14 A. Those are costs that have been incurred already.
- 15 Q. And are they -- do they have to be expended or could they
- 16 be accrued?
- 17 A. Sunk costs are -- depending on your accounting method, if
- 18 you're on accrual accounting method, accrued cost could be
- 19 considered sunk cost. If you're on a cash method, it's only
- 20 cash costs.
- Q. Well, are you familiar with pre-grant purchases?
- 22 A. They're not allowed.
- 23 Q. I asked are you familiar with it?
- 24 A. Yes.
- Q. And it's your opinion that they're not allowed?

869zkar3 Benedict - cross

- 1 A. It's not my opinion. It's ATP guidance.
- Q. ATP could waive any rule that they have, correct?
- 3 A. I don't know what ATP can or will do.
- 4 Q. Well, if costs are expended in preparation for the grant to
- 5 be used for the grant, it's up to ATP to decide whether or not
- 6 they're going to prove those costs or not?
- 7 A. That would seem to be okay.
- 8 Q. And just as in rent, which is considered, generally
- 9 speaking, almost always as an indirect cost, correct?
- 10 A. Yes.
- 11 Q. Now, do you understand -- you have an accounting
- 12 background, correct?
- 13 A. Yes, sir.
- 14 Q. Education wise and experience wise?
- 15 A. Yes, sir.
- 16 Q. And are you familiar with the background as to why rent is
- 17 considered by in the ATP grant as indirect cost?
- 18 A. Yes.
- 19 Q. And why is that?
- 20 A. Businesses are presumed to be in existence when they apply
- 21 for an ATP grant as a business.
- 22 As a business already in place, you're already paying
- 23 your rent, you're already paying your heat, you're already
- 24 paying those things.
- 25 ATP is interested in funding projects, not rent, not SOUTHERN DISTRICT REPORTERS, P.C.

869zkar3 Benedict - cross

1 electricity, not other things. So they will not allow you to

- 2 include what you're already spending as a normal business as
- 3 part of the grant, as a single grant.
- 4 Q. Does it make a difference if you're on the accrual basis?
- 5 A. No. Whether you're on accrual or cash basis, rent is rent;
- 6 it's an indirect expense.
- 7 Q. And you had discussion so that -- what about an item
- 8 purchased before the grant, purchased let's say -- rent started
- 9 October 1st, 2001, an item that was purchased in the end of
- 10 September 2001 was delivered after the grant started in
- 11 October, paid for by year end, would that be an appropriate
- 12 expense attributable to the NIST grant?
- 13 A. Um, you'd have to ask NIST that question. I don't know.
- 14 Give me the specific item.
- 15 Q. Let's say a --
- 16 THE COURT: Let's not say. Let's give -- he wants a
- 17 specific item.
- 18 Q. An SGI computer?
- 19 A. If you contract with SGI to deliver a computer after the
- 20 start date of the grant, then yes.
- 21 If you contract with SGI to deliver the computer prior
- 22 to the start date of the grant, no.
- 23 Q. Now, you helped, did you not, prepare revised quarterlies
- in this case?
- 25 A. Yes, I did.

- 1 Q. And when did you do that?
- 2 A. They were ready in the middle of July, but as we were
- 3 working on the cover letter, they didn't get submitted till the
- 4 middle of August.
- 5 Q. Of '03?
- 6 A. Of '03.
- 7 Q. And they were actually submitted on August 13th, '03, the
- 8 same time you submitted the cover letter, correct?
- 9 A. Yes, sir.
- 10 Q. And what financials did you use to create the revised
- 11 status report? I believe it's 41A, 42A, 43A?
- 12 A. I used the monies that they drew down from ATP as the
- 13 expenditures, because that was the only thing that I could --
- 14 that was the only thing in the books that I could draw a line
- 15 to and say this is where the number came from. Anything else I
- 16 would've been guessing, and that would have been inaccurate as
- 17 the original reports.
- 18 Q. Well, when you arrived at CASI, the system was -- the
- 19 bookkeeping system was in disarray, correct?
- 20 A. Yes.
- 21 Q. Did you -- you looked at the records?
- 22 A. Yes.
- 23 Q. Yourself?
- 24 A. Yes.
- Q. Was Ken Jackson Group involved at that time when you SOUTHERN DISTRICT REPORTERS, P.C.

- 1 arrived?
- 2 A. Yes.
- 3 O. And were they involved in creating new books for CASI?
- 4 A. They were -- I asked them to create an ATP set of
- 5 financials, which would mean reclassing data on the existing
- 6 system. It doesn't mean changing any numbers. It just means
- 7 putting it in a different bucket.
- 8 Q. And, in fact, when you said that Dr. Karron would go to the
- 9 computer, he would put stuff in a different bucket, right?
- 10 A. Yes.
- 11 Q. He wouldn't change anything, correct?
- 12 A. He would change the bucket.
- 13 Q. The bucket. But he wouldn't delete an expense?
- 14 A. No.
- 15 Q. Would he change what the expense was for?
- 16 A. No.
- Q. As a matter of fact, he had invoices or backup for every
- 18 expense that he incurred, right?
- 19 A. They were all on that paper report system. I couldn't tell
- 20 you whether he did or he didn't. I just knew everything was
- 21 there.
- 22 Q. And when you spent time in New York, how much time did you
- 23 spend in New York?
- 24 A. I spent probably three days a month until the audits, and
- 25 then it was a week at a time.

869zkar3 Benedict - cross

1 THE COURT: Full week you said?

- THE WITNESS: Pardon me?
- 3 THE COURT: Five days a week?
- 4 THE WITNESS: Five days a week. The first, for the
- 5 first audit, and when the second audit came I believe I was
- 6 here for two consecutive weeks.
- 7 THE COURT: When you say the first audit, what are you
- 8 referring to there?
- 9 THE WITNESS: OIG came in in June, I believe, and
- 10 started something, and then it was broken for an OIG reason and
- 11 then she left and came back and completed it.
- 12 THE COURT: And when did she come back?
- 13 THE WITNESS: I believe in August.
- 14 THE COURT: I see.
- 15 Q. It was your understanding that you and Joan Hayes and Frank
- 16 Springs were to work together on the -- to chart the accounts
- and create a new set of books for CASI?
- 18 A. It was my understanding that I was working with Frank
- 19 Springs and that Joan was an interested party, but not actually
- 20 involved in making any of the classifications on the books.
- 21 THE COURT: Why was she an interested party?
- 22 THE WITNESS: Because she's the auditor of -- for
- 23 CASI, and she would be interested in -- she had to file tax
- 24 reports and other financial data -- do an audit for Dr. Karron.
- 25 THE COURT: An audit for Dr. Karron?

869zkar3 Benedict - cross

- 1 THE WITNESS: Uh-huh.
- THE COURT: Of what?
- 3 THE WITNESS: Of both the ATP project and of CASI as a
- 4 corporation.
- 5 Q. Were you ware whether or not Joan Hayes was doing Dr.
- 6 Karron's personal taxes?
- 7 A. Yes, I was aware of that.
- 8 Q. And she was, correct?
- 9 A. I have no firsthand evidence that she was, but I learned
- 10 that in discussion.
- 11 Q. And when you would come to New York these three days a
- 12 week, would you go to --
- 13 A. That was once a month three days a week.
- 14 Q. Once a month three days a week, would you go to CASI?
- 15 A. Yes.
- 16 Q. Or would you go to Frank Springs?
- 17 A. No. I would go to CASI's first. I would periodically
- 18 spend time a day or so at Frank Springs.
- 19 O. And did there come a time while Ken -- the Ken Jackson
- 20 Group was a bookkeeping group?
- 21 A. Yes, sir.
- 22 Q. And Springs was assigned to this project?
- 23 A. Yes.
- Q. And did there come a time that checks started to bounce
- 25 with regularity?

869zkar3 Benedict - cross

- 1 A. Not that I'm aware of.
- 2 Q. And is it your testimony that you recommended that the
- 3 bookkeeping be done off-site?
- 4 A. Yes.
- 5 Q. And when did you do that?
- 6 A. April, March April, 2003.
- 7 Q. Isn't it a fact that -- first, isn't it a fact that you
- 8 came aboard as working for CASI sometime in March of '03?
- 9 A. No. Came on board in January.
- 10 Q. And do you have any document that you could point to to
- 11 refresh your recollection about that or are you sure of that?
- 12 A. I'm relatively sure of that, because the budget amendment
- 13 was started in December of '02, and I was still working for
- 14 Axiom at that time.
- 15 Q. Let me show you what's marked as defendant's R for
- 16 identification and ask you if you recognize what's in
- 17 defendant's R for identification?
- 18 A. Yeah. It says March 1st.
- 19 Q. And is that an e-mail that you were c.c.'d on?
- 20 A. Yes.
- 21 MR. RUBINSTEIN: We'd offer defendant's R into
- evidence, your Honor?
- 23 THE WITNESS: In reference to that e-mail address,
- 24 however, I didn't use it. So it's quite possible I never saw
- 25 that e-mail.

	869zkar3	Benedict - cross
1	MR. EVER	RDELL: Objection, your Honor. He can't
2	authenticate it.	
3	THE COUR	JRT: What? Does it refresh your recollection?
4	THE WITN	TNESS: No, sir. I don't recall seeing that
5	e-mail.	
6	Q. Well, does it	t refresh your
7	THE COUR	JRT: Do it refresh your recollection that you
8	faxed a document in March?	
9	THE WITN	TNESS: No.
10	THE COUR	JRT: The exhibit is not admitted.
11	(Continu	nued on next page)
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SOUTHERN DISTRICT REPORTERS, P.C.

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8697KAR4 Benedict - cross

- 1 BY MR. RUBINSTEIN:
- 2 Q. Isn't it a fact that Dr. Karron suggested to you in March
- 3 of 2003 that the bookkeeping be moved off site?
- 4 A. I don't recall that, sir, no.
- 5 Q. And to your knowledge, how long was Frank Spring working on
- 6 the books of CASI?
- 7 A. He was there when I got there. I don't know how long he
- 8 was there before I got there.
- 9 Q. Did you use his numbers to submit your financial statement
- 10 revision?
- 11 A. I used the numbers that were drawn down from ATP, the
- 12 actuals.
- 13 O. And did Frank Spring create some kind of spreadsheet
- showing the actuals?
- 15 A. No.
- 16 O. Now --
- 17 THE COURT: What do you mean you used the funds that
- were drawn down from ATP?
- 19 THE WITNESS: This grant was not a reimbursement
- 20 grant, it was an advance grant, which means that as he needed
- 21 money he could submit a request to ATP for a certain amount of
- 22 money and they would send him the money, and in grant parlance
- that's called drawing down.
- 24 THE COURT: Once the money was drawn down, your report
- 25 would reflect what?

8697KAR4 Benedict - cross

1 THE WITNESS: My report would reflect the amount of

- 2 money he took from ATP.
- 3 THE COURT: Drawn down.
- 4 THE WITNESS: Yes. What the report should have shown
- 5 was the amount of ATP money that was drawn down that was
- 6 actually spent on the grant, but since I couldn't tell because
- 7 everything was mixed together what was spent on the grant and
- 8 what was spent for other non-grant related items, I couldn't
- 9 accurately put any number in there, so the only accurate number
- 10 I could find that ATP might find some association with was the
- 11 draw-down.
- 12 Q. And this is in July or August of 2003?
- 13 A. Yes, July of 2003.
- 14 O. And --
- 15 A. And you will notice that fourth quarter 2002, first quarter
- 16 2003 and second quarter 2003 reports were all submitted on that
- 17 date.
- 18 Q. Correct. August 13.
- 19 A. Yes.
- 20 Q. 2003. Now, these reports were submitted after --
- 21 withdrawn.
- 22 Were these reports, the revised financial statement
- 23 reports, submitted after you received the first report from
- 24 Riley, I think they called it a flash audit report? Had you
- 25 received that?

8697KAR4 Benedict - cross

- 1 A. I don't recall the exact date of that report, no, sir, but
- 2 I know that these reports were prepared in the middle of July.
- 3 I don't recall the date of the flash review.
- 4 Q. Well, did you receive it -- do you know if you received a
- 5 flash review as soon as it was submitted?
- 6 A. I don't know.
- 7 O. Would July 3, 2003 refresh your recollection of the date of
- 8 the flash report?
- 9 A. No, sir, it doesn't.
- 10 Q. Now, did there come a time you received -- withdrawn.
- 11 Did Joan Hayes eventually complete her audit?
- 12 A. I have no idea.
- 13 Q. Did you ever see Joan Hayes' audit report?
- 14 A. No, sir, I haven't.
- 15 Q. Did you ever use the figures of Joan Hayes' audit report to
- 16 submit your revised financial statements?
- 17 A. No, sir, I didn't.
- 18 Q. Are you aware as you sit there now that Joan Hayes turned
- 19 over her audit report to OIG, Ms. Riley, in June of 2003?
- 20 A. No, sir, I'm not.
- 21 Q. And who are you asking for the numbers to put in in your
- 22 revised financial reports?
- 23 A. Frank. Frank Spring.
- Q. Did you ever hear the expression Joanified?
- MR. EVERDELL: Objection.

SOUTHERN DISTRICT REPORTERS, P.C.

8697KAR4 Benedict - cross

- 1 THE COURT: Objection sustained.
- Q. You tell us you went to a board meeting, correct?
- 3 A. Yes.
- 4 Q. How many board meetings did you go to?
- 5 A. One.
- 6 Q. And was that during the day or at night?
- 7 A. Night.
- 8 Q. And was in a restaurant or in a room somewhere, or both?
- 9 A. I believe it was in a room somewhere, and that we went to
- 10 dinner after the meeting.
- 11 Q. And that was the meeting at which you requested that the
- 12 checks be written off site, correct?
- 13 A. Yes, sir. We requested that checks be removed from the
- 14 CASI premises and moved off site.
- 15 Q. But they still had to be returned to Dr. Karron for him to
- 16 sign, right?
- 17 A. Yes, sir.
- 18 Q. Now, this PayPal account, that was a separate account,
- 19 correct?
- 20 A. It had to be. We didn't know anything about it at the
- 21 time.
- 22 Q. Well, the PayPal account was chargeable to Dr. Karron's
- 23 American Express card, correct?
- 24 A. The entry I saw was, yes.
- Q. And were you aware that Dr. Karron had an American Express SOUTHERN DISTRICT REPORTERS, P.C.

8697KAR4 Benedict - cross

- 1 credit card?
- 2 A. A company American Express credit card, yes.
- 3 O. Were you aware that he also had a personal Mastercard?
- 4 A. No, sir, I wasn't.
- 5 Q. Did you ever discuss with Dr. Karron at any time whether or
- 6 not he was using his Mastercard to purchase items on behalf of
- 7 the project?
- 8 A. No, sir, I didn't.
- 9 Q. Now, you say the PayPal expense that you saw. When was
- 10 that?
- 11 A. July, August. I don't remember exactly the date, but it
- was after the board meeting.
- 13 Q. And was the amount over \$200 that you saw?
- 14 A. I don't remember the amount.
- 15 Q. Well, did you discuss it with Dr. Karron what he had
- 16 purchased?
- 17 A. All I remember from the discussion was that he said he had
- 18 to pay the bills.
- 19 Q. And that related to the PayPal.
- 20 A. That instance, yes.
- 21 Q. Is there anything that you could -- did anybody from the
- 22 prosecution show you any documents of the PayPal expenditures?
- 23 A. No.
- Q. Let me show you what's been marked for identification as
- 25 Defendant's Exhibit Z.

8697KAR4 Benedict - cross

1 DEPUTY COURT CLERK: Z as in zebra?

- 2 MR. RUBINSTEIN: Yes.
- 3 THE COURT: The last number was U, I think.
- 4 MR. RUBINSTEIN: I wasn't sure, Judge. I didn't want
- 5 to get a double letter, so I went to Z to be safe.
- 6 THE COURT: Z for identification.
- 7 Q. I show you what's marked for identification as Defendant's
- 8 Exhibit Z and ask you whether that could refresh your
- 9 recollection as to what PayPal expense you observed on Dr.
- 10 Karron's American Express card statement.
- 11 A. No, sir, it doesn't.
- 12 Q. OK. Thank you. So it could have been as little as less
- than a hundred dollars, right?
- 14 A. Yes, sir.
- 15 Q. Did you have experience and background with manuals,
- 16 preparation of manuals for companies, for benefits and things
- 17 like that?
- 18 A. No, not for benefits.
- 19 Q. Did you discuss with Dr. Karron the creation of a benefits
- 20 manual?
- 21 A. I don't remember specifically discussing a benefits manual,
- 22 but I do remember discussing written procedures.
- 23 Q. Was there a time while you were the business manager at
- 24 CASI that you spoke to an attorney or attorneys about employee
- 25 benefit programs?

8697KAR4 Benedict - cross

- 1 A. There may have been. As I said earlier in my testimony, we
- did talk about trying to buy a handbook of some kind, and that
- 3 would probably have to be through an attorney.
- 4 Q. Well, did you have an e-mail address as benedict@casi.net?
- 5 A. I did, but as I said earlier I didn't use it.
- 6 Q. Well, let me show you what's been marked Defendant's OO. I
- 7 show you that document.
- 8 A. Yes, sir.
- 9 Q. Have you ever seen that document before?
- 10 A. Yes, sir.
- 11 Q. And when did you see that document?
- 12 A. It appears to be something that I started working on a
- draft to try to put something in place, yes, sir.
- 14 Q. And did that relate to benefits for the employees of CASI?
- 15 A. Yes, it did.
- 16 MR. RUBINSTEIN: We offer 00 into evidence.
- MR. EVERDELL: No objection.
- 18 THE COURT: No objection? OO is admitted into
- 19 evidence.
- 20 (Defendant's Exhibit 00 received in evidence)
- 21 THE COURT: Could I have a copy?
- 22 MR. RUBINSTEIN: Here is a copy for your Honor.
- THE COURT: Thank you.
- MR. RUBINSTEIN: I have an unorthodox sticker on it,
- 25 Judge.

8697KAR4 Benedict - cross

- 1 THE COURT: I will mark it 00.
- Q. Now, you are aware that CASI had a budget line item in the
- 3 first year of \$110,000 for fringe benefits?
- 4 A. Yes, sir.
- 5 Q. And did they spend \$110,000 on --
- 6 A. I don't remember.
- 7 Q. And fringe benefits includes, does it not, withholding
- 8 taxes?
- 9 A. Yes, sir, it does.
- 10 THE COURT: It includes what?
- 11 THE WITNESS: Withholding taxes. FICO, FUDA, those
- 12 types of things.
- 13 O. Did you have discussions with Dr. Karron as to whether or
- 14 not fringe benefits even without a manual could be allowable if
- 15 it was reasonable and evenhandedly applied across the board of
- 16 the company?
- 17 A. I don't recall that conversation.
- 18 Q. Are you saying it never happened?
- 19 A. No, sir, I'm not.
- 20 Q. In your view, is education deductible as a fringe benefit?
- 21 A. If it's related to the grant.
- 22 Q. Now, the rent that was paid was paid by CASI to the
- 23 defendant, correct?
- 24 A. I don't think -- I don't understand it that way.
- Q. Well, there was a NIST account, was there not?

8697KAR4 Benedict - cross

- 1 A. No, there was a CASI account.
- 2 O. Weren't there in fact four accounts?
- 3 A. Not on the books when I got there there weren't.
- 4 Q. Isn't it a fact that there was a NIST account in place and
- 5 checks were written from the NIST account?
- 6 A. Yes, checks were written from the NIST account. Everything
- 7 was written from the NIST account.
- 8 Q. But isn't it a fact the rent check was written from a CASI
- 9 Inc. account which was a green check?
- 10 A. All of the money that was in all of the accounts was NIST
- money, so the color of the check didn't matter.
- 12 Q. Well, were there different colored checks?
- 13 A. I don't remember if there were different colored checks or
- 14 not.
- 15 Q. I am going to show you what is in evidence as defendant's
- 16 P-1 through P-6?
- 17 THE COURT: What's the exhibit?
- MR. RUBINSTEIN: P-1 through P-6.
- 19 THE COURT: Have you ever seen those before?
- THE WITNESS: No, sir, I have not.
- 21 Q. Did you ever ask Dr. Karron if he had contributed money to
- 22 CASI?
- 23 A. Yes. No, not to CASI. To NIST.
- 24 THE COURT: You said?
- 25 THE WITNESS: I never asked him if he contributed

SOUTHERN DISTRICT REPORTERS, P.C.

1 money to CASI; I only asked if he contributed money to NIST, to

- 2 the NIST project.
- 3 O. Now, you do recognize those checks now that you looked at
- 4 them, do you not? Not as having seen them before, but that
- 5 those are checks that went to CASI.
- 6 MR. EVERDELL: Objection. He doesn't recall them.
- 7 THE COURT: Objection sustained.
- 8 Q. So, is it fair to say you never had occasion to look at Dr.
- 9 Karron's personal account?
- 10 A. Yes, that's true. They have nothing to do with the grant,
- 11 so I had no interest in it.
- 12 Q. If he was putting money into the company, the company's
- only source of income was ATP, correct?
- 14 A. Yes.
- 15 Q. So, wasn't it important to see whether or not he made
- 16 contributions --
- 17 MR. EVERDELL: Objection.
- 18 Q. -- from his personal funds?
- MR. EVERDELL: Objection.
- 20 THE COURT: If this is grounded on a hypothetical, I
- 21 will allow the question.
- 22 A. Repeat the question, please.
- 23 Q. Wasn't it relevant to determine whether or not he used
- 24 personal funds --
- 25 A. Only if I could see them in the NIST records. And they SOUTHERN DISTRICT REPORTERS, P.C.

8697KAR4 Benedict - cross

weren't in the NIST records, so, no, it wasn't relevant. I

- don't care what he was doing with CASI money.
- 3 O. Isn't it a fact that the expenses, the rent expenses were
- 4 paid out of CASI? Withdrawn.
- 5 How many checks -- rent was \$2,000 a month, correct?
- 6 A. I believe that's correct.
- 7 Q. How many of the \$2,000 checks were written out of NIST?
- 8 A. Since the only money was NIST money, all of them.
- 9 Q. Isn't it a fact -- well, when Dr. Karron would get a
- 10 paycheck, if he deposited the money in CASI --
- 11 A. I don't know what he did with his paycheck, sir.
- 12 Q. Because you never bothered to look at CASI.
- MR. EVERDELL: Objection.
- 14 THE COURT: Objection sustained. Let's have the
- 15 question. That's not a question.
- 16 Q. Now, you had already told Dr. Karron he couldn't pay for
- 17 rent, correct, a number of times?
- 18 A. Yes, sir.
- 19 Q. And what months were these rent checks payable for?
- 20 A. I don't recall the specific months.
- 21 Q. Isn't it a fact that the majority of them were for pregrant
- time before October 1, 2001?
- 23 A. There were some, yes.
- Q. So that was not rent being paid for the grant time,
- 25 correct, if it's pregrant?

- 1 A. Yes.
- 2 Q. And if it's paid out of CASI, it's not a NIST account and
- 3 it's not attributable to NIST.
- 4 THE COURT: Objection to the form of the question.
- 5 Q. In fact there came a time that either you or Ms. Hayes
- 6 convinced Dr. Karron that he couldn't deduct the rent from the
- 7 apartment because he lived there, correct?
- 8 A. I don't know anything about deductions. That has nothing
- 9 to do with the grant.
- 10 Q. Well, the rent would not be allowable.
- 11 A. It's not an allowable charge to the grant, but it has
- 12 nothing to do with what he can deduct or not deduct.
- 13 Q. Well, didn't you have a discussion about Dr. Karron moving
- 14 to Connecticut?
- 15 A. Yes, we did.
- 16 Q. And did Dr. Karron advise you that if he moved to
- 17 Connecticut then the entire rent should be allowable because
- 18 NIST was the only project in hand?
- 19 A. He may have said that, sir, but since it's not in the
- 20 budget it was a moot point. What he believed didn't matter.
- 21 Q. It was moot to you?
- 22 A. Yes, sir.
- Q. It wasn't moot to him.
- 24 A. I don't know what --
- MR. EVERDELL: Objection.

SOUTHERN DISTRICT REPORTERS, P.C.

8697KAR4 Benedict - cross

- 1 A. I don't know what was relevant to him or not.
- 2 Q. Isn't it a fact that Dr. Karron after he -- he didn't move
- 3 to Connecticut, correct?
- 4 A. Not as far as I know, he did not.
- 5 Q. And when he did not move to Connecticut, isn't it a fact
- 6 that he stopped getting rent checks from either CASI or NIST
- 7 for the apartment?
- 8 A. I don't recall.
- 9 Q. Now, you told us before that utilities are also an indirect
- 10 cost, correct?
- 11 A. Yes, sir.
- 12 Q. Was there or was there not negotiations with ATP to permit
- 13 deductions for utilities?
- 14 A. I don't recall anything with utilities, sir.
- 15 THE COURT: You don't recall any such negotiations?
- 16 THE WITNESS: No, sir.
- 17 Q. Let me show you something and see if these documents --
- 18 Let me show you what's been marked for identification
- 19 as Defendant's RR.
- 20 THE COURT: For identification.
- MR. RUBINSTEIN: Yes, your Honor.
- 22 Q. Take a look at these documents, sir, and see --
- 23 THE COURT: RR, I can allow him to look at that. If
- 24 you're showing him something else, we need to have
- 25 identification of it.

8697KAR4 Benedict - cross

1 MR. RUBINSTEIN: There are three documents, RR, RR-1

- 2 and RR-2.
- 3 THE COURT: What's your question, Mr. Rubinstein?
- 4 Q. Yes. My question is: By looking at those documents, does
- 5 that refresh your recollection, sir, that there were
- 6 negotiations going on with NIST ATP for allowing Dr. Karron to
- 7 be reimbursed for utility expenses?
- 8 A. Yes.
- 9 Q. And do you now recall those discussions going on?
- 10 A. I don't recall the specific discussions, but I do remember
- 11 there were, yes. And the discussions were that if he could
- 12 demonstrate the fact that there was an increase, that they
- 13 could be classified as direct expenses, not as indirect
- 14 expenses.
- 15 Q. Even though normally speaking utilities were never allowed,
- 16 correct?
- 17 A. Correct.
- 18 THE COURT: He could get the increase or the entire
- 19 utility amount?
- 20 THE WITNESS: The incremental amount of additional
- 21 expense caused by the grant could be classified as a direct
- 22 expense and not an indirect expense. Direct expenses are
- 23 allowed regardless of what they are. Indirect expenses are not
- 24 allowed.
- Q. Now, did you have a discussion with Dr. Karron as to using SOUTHERN DISTRICT REPORTERS, P.C.

	8697KAR4 Benedict - cross
1	equipment that he owned prior to the grant for cofunding
2	purposes?
3	A. Yes.
4	Q. And did you
5	THE COURT: It's ten after. How much longer are you
6	going to be?
7	MR. RUBINSTEIN: About 20 minutes, Judge.
8	THE COURT: We will take the break and come back ten
9	minutes after two.
10	MR. RUBINSTEIN: Thank you, Judge.
11	THE COURT: The jury is excused.
12	(Luncheon recess)
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SOUTHERN DISTRICT REPORTERS, P.C.

1 AFTERNOON SESSION

- 2:10
- 3 (Jury not present)
- 4 MR. KWOK: Just so the record is clear, I just amended
- 5 Government Exhibit 902, which is the proposed stipulation we
- 6 referred to earlier in the morning. That refers to Government
- 7 Exhibit 1000, which is a disk containing e-mails produced by
- 8 the defense. I have amended it to say Exhibit 1000 and 1000-A,
- 9 because subsequent to the signing of this stipulation we
- 10 received an additional CD, so now the proposed stipulations
- 11 will refer to both disks, and I have over lunch conferred with
- 12 Mr. Rubinstein's associate as to the e-mails we intend to
- 13 publish to the jury.
- 14 THE COURT: All right. And the stipulation has been
- 15 signed?
- 16 MR. KWOK: The proposed stipulation has been signed.
- 17 THE COURT: The first exhibit entry is 1000?
- 18 MR. KWOK: Yes. So, after that it would say
- 19 Government Exhibit 1000 and 1000-A, and then the second
- 20 paragraph it would now read, "If deemed relevant, Government's
- 21 Exhibits 1000 and 1000-A may be received in evidence."
- 22 THE COURT: And what does it say about defense
- 23 exhibit?
- MR. KWOK: I think that can be crossed out.
- 25 THE COURT: Well, you better confer.

SOUTHERN DISTRICT REPORTERS, P.C.

	8697KAR4 Benedict - cross	
1	MR. KWOK: And just so the record again is clear, t	he
2	words "Defense Exhibit" in paragraphs 1 and 2 are now strick	en.
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SOUTHERN DISTRICT REPORTERS, P.C.

- 1 (Jury present)
- THE COURT: Please be seated.
- 3 All right, Mr. Rubinstein.
- 4 MR. RUBINSTEIN: Thank you, your Honor.
- 5 ROBERT BENEDICT, resumed.
- 6 CROSS EXAMINATION (Continued)
- 7 BY MR. RUBINSTEIN:
- 8 Q. Now, did you make any submission to ATP on behalf of CASI
- 9 based upon cost share as an inkind contribution?
- 10 A. We submitted the revised reports and the new reports for
- 11 the fourth quarter of '02, first quarter and second quarter of
- 12 '03.
- 13 Q. And did you include in those reports the fact that Dr.
- 14 Karron, CASI, has contributed equipment that they previously
- 15 owned?
- 16 A. No.
- 17 Q. Were you aware of whether or not there was equipment that
- 18 was previously owned by CASI prior to obtaining the ATP grant?
- 19 A. I was not.
- 20 Q. Did you ascertain -- there were a number of computers in
- the apartment on East 33rd Street, correct?
- 22 A. Yes.
- 23 Q. I mean they weren't the kind of computers -- were they the
- 24 kind of computers -- withdrawn.
- 25 Can you describe any of those computers for the jury?

 SOUTHERN DISTRICT REPORTERS, P.C.

- 1 A. No, just that they were very large and very powerful.
- 2 Q. And do you know whether or not Dr. Karron expanded the
- 3 capacity of those computers?
- 4 A. I do not.
- 5 Q. Did you check any invoices to determine when any of those
- 6 computers were purchased?
- 7 A. There were some computers purchased during the grant
- 8 period.
- 9 Q. Did you determine whether all the computers --
- 10 A. No, sir, I did not.
- 11 Q. You are familiar, are you not, with the fact that you could
- 12 get credit for coshare contribution by using your own equipment
- that you owned in the project?
- 14 A. Yes, sir, you can if it's included in the budget. There is
- 15 a 30 percent inkind allowance for cost share if you include it
- 16 in the budget.
- 17 Q. So you could take 30 percent of the value of the equipment
- if it's includable in the budget.
- 19 A. Yes, sir.
- 20 Q. Did you ever ask Dr. Karron if any of the equipment that
- 21 was there was purchased prior to the budget?
- 22 A. He told me that there was.
- 23 Q. Did you ask him if he had any bills or invoices showing the
- value of that equipment?
- 25 A. No, I did not, because it was not in the budget.

- 1 Q. Did you request that that be included in the budgetary
- 2 revision or amendment?
- 3 A. At the beginning when we were doing the budget amendment I
- 4 did not.
- 5 Q. Well, did there come a time that you did?
- 6 A. I suggested another budget amendment, yes, in the June time
- 7 frame.
- 8 Q. Now, you mentioned about --
- 9 THE COURT: Was that amendment made?
- 10 THE WITNESS: No, sir.
- 11 Q. At the time you came to CASI, no budget amendment request
- was acted upon, correct?
- 13 A. That's correct.
- 14 Q. And you told us that you became aware that Dr. Karron took
- an advance on salary early on in the grant.
- 16 A. Yes, sir.
- 17 Q. And did you locate that in the books and records of CASI?
- 18 A. In the books that I looked at, yes, there was a salary
- 19 advance.
- 20 Q. And did you --
- 21 A. And Dr. Karron admitted that he had taken a salary advance.
- 22 Q. And in fact are you aware that in August of 2002, before
- 23 the end of the first year of the grant, that that advance was
- 24 adjusted in the books of CASI?
- 25 A. No, sir, I was not. Nor did Dr. Karron indicate that that SOUTHERN DISTRICT REPORTERS, P.C.

- 1 had happened.
- Q. Did he tell you that it happened?
- 3 A. No.
- 4 Q. Did you ask him?
- 5 A. I asked him about the \$75,000 advance, and he said, yes, he
- 6 had taken one. And when I asked him about it, he said he would
- 7 repay it. I saw no evidence that it had been repaid.
- 8 Q. Did you ever ascertain how much salary Dr. Karron had
- 9 received in the first year of the grant?
- 10 A. No. I wasn't there.
- 11 Q. Well, do you know what his budgeted item for his salary was
- 12 for the first year of the grant?
- 13 A. I believe it was in excess of 200,000. I don't remember
- 14 exactly what it was.
- 15 Q. So, if he received a gross amount of salary of about
- 16 \$35,000 on a \$175,000 salary, does that compute to you?
- 17 MR. EVERDELL: Objection.
- 18 A. I don't recall.
- 19 Q. Well, in your accounting experience, in your background,
- 20 ballpark figure, how much would a person who received \$175,000
- in salary take home in take-home pay?
- MR. EVERDELL: Objection.
- THE COURT: Objection sustained.
- 24 Q. Do you know as you sit there now as to how much salary Dr.
- 25 Karron took home in the first year of the grant?

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 A. No, sir, I do not.
- Q. Let me show you what's in evidence as Defendant's FFF, and
- 3 I ask you have you ever seen those checks before.
- 4 A. No, sir, I don't recall them.
- 5 Q. Have you ever seen any checks from Dr. Karron's personal
- 6 account?
- 7 A. No, sir.
- 8 Q. Now, are you familiar with a term net operating loss?
- 9 A. Yes.
- 10 Q. What does that mean?
- 11 A. That means after taxes you have shown a loss in your
- 12 business.
- 13 Q. And can you carry that over to the next year so that if you
- 14 make a profit you can use that loss against a profit?
- 15 A. That's a tax issue; it's not a grant issue. I don't know
- 16 anything about that, sir.
- 17 Q. Are you aware of whether or not if you change the name of
- 18 your corporation, of your entity, whether or not you have to
- 19 notify the grant offices?
- 20 A. Yes, sir, you do.
- 21 Q. And do you know whether or not if you change the form of
- 22 your entity from a corporation, an Inc to an LLP, that you can
- lose your net operating loss?
- MR. EVERDELL: Objection.
- 25 A. It's a tax issue. It's irrelevant to the grant.

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 Q. Well, I am asking you about it on a tax issue.
- 2 MR. EVERDELL: Objection.
- 3 THE COURT: Objection sustained.
- 4 Q. By the way, were payroll taxes paid by CASI?
- 5 A. Yes and isn't it.
- 6 Q. And isn't it a fact that when you -- what's a form 269
- 7 report?
- 8 A. That's the report you have to file with ATP on a quarterly
- 9 basis, identifying the amount of money you spent on the project
- 10 and the amount of money that you contributed to the project.
- 11 Q. And when you first joined CASI, did you assume that Dr.
- 12 Karron used his salary to meet his matching requirements of the
- 13 grant?
- 14 A. No.
- 15 Q. Well, do you recall swearing to an affidavit on September
- 16 27, 2006 at Southport, North Carolina -- is that where you're
- 17 from, sir?
- 18 A. Yes, sir.
- 19 Q. Let me show you what's marked as Government Exhibit 3506-B,
- 20 as in boy.
- 21 A. If Dr. Karron was paid with NIST funds, those can't be used
- 22 as matching contribution. You can't double dip.
- Q. Do you see this document 3506-B?
- 24 A. Yes.
- Q. Do you see your signature on the second page?

- 1 A. Yes, I do.
- Q. You swore to the truth of that?
- 3 A. Yes, I did.
- 4 Q. You read it over before you signed it?
- 5 A. Yes.
- 6 Q. Take a look where I have the S and see if that refreshes
- 7 your recollection as to what you told the agents.
- 8 A. Yes, it does.
- 9 O. And in fact --
- 10 A. What I meant by that statement, sir, was that I assumed he
- 11 was using some of his CASI money, he was using money that was
- 12 paid to him personally for his work, and then he was
- 13 reinvesting that into the program. That was not the case.
- 14 Q. In fact you said he was using some of his salary to meet
- the match requirements of the grant, correct?
- 16 A. Yes, as I just explained.
- 17 Q. Is that what you said?
- 18 A. Yes, sir, that's what I said.
- 19 Q. And to your knowledge, while Dr. Karron was working on the
- 20 ATP grant did he have any other salary?
- 21 A. No.
- 22 Q. So the only salary you could be talking about is the salary
- 23 he is getting from the ATP grant, correct?
- 24 A. Yes. But if I pay you and you turn around and use your own
- 25 money to reinvest it in the program, that would match. He did SOUTHERN DISTRICT REPORTERS, P.C.

- 1 not do that.
- 2 Q. You don't know if he did or not.
- 3 A. There was no record of it in the ATP funds. There was no
- 4 record of any income coming from any source other than ATP.
- 5 Q. Where did he deposit his paycheck, sir?
- 6 A. In his own bank account, I guess.
- 7 Q. You guess.
- 8 A. I didn't pay any attention to his own accounts.
- 9 Q. And you didn't pay any attention to the CASI accounts and
- 10 the deposits he made, correct?
- 11 A. They were not relevant to the grant.
- 12 Q. But you said before all these funds were commingled,
- 13 correct?
- 14 A. Yes.
- 15 Q. And you see P-1 through P-6, the checks in front of you?
- 16 A. Yeah.
- 17 Q. You had never seen those before, had you?
- 18 A. No.
- 19 Q. But those were checks that went into CASI during the time
- of the grant's first year, correct?
- 21 A. They're made out to CASI, yes.
- 22 Q. And you never saw them before.
- 23 A. No.
- Q. So you missed them, right?
- 25 A. Checks made out to CASI don't mean anything. They're not SOUTHERN DISTRICT REPORTERS, P.C.

- 1 relevant to the grant.
- Q. What is CASI's -- what was CASI's only business during the
- 3 time of the grant?
- 4 A. The grant. But they were not deposited to the ATP project,
- 5 and the money he got for these checks came from the ATP
- 6 project, so you can't use ATP money to cover an ATP match. It
- 7 doesn't work that way.
- 8 Q. How about using --
- 9 A. The only money he had coming in was coming from ATP. Where
- 10 the money went is what's at question here.
- 11 Q. Yes. And you don't know where it went, right?
- 12 A. This money went to CASI.
- 13 Q. And if CASI paid ATP expenses, then it would be spent on
- 14 ATP.
- 15 A. Yes.
- 16 Q. But you don't know that because you never traced this
- 17 money, right?
- 18 A. No, I did not trace this money.
- 19 Q. You never traced where he put his salary or what he spent
- 20 his salary on, right?
- 21 A. If he spent it on ATP, he did not make that known to me
- 22 that he had done that, so I would not have gone looking into
- 23 his private accounts to see what he was doing.
- Q. Well, didn't you rely upon Frank Spring?
- 25 A. I relied on the accounting transactions.

1 Q. And wasn't Frank Spring also working on his personal taxes,

- 2 Dr. Karron's personal taxes?
- 3 A. Yes.
- 4 MR. EVERDELL: Objection.
- 5 A. But that again has nothing to do with the grant.
- 6 Q. That's up to the jury.
- 7 A. Yes.
- 8 MR. EVERDELL: Objection.
- 9 THE COURT: Objection is sustained.
- 10 Q. Now, you learned that the grant was suspended, right?
- 11 A. Yes, sir.
- 12 Q. Did you learn the grant was suspended because of a
- 13 violation of the copay?
- 14 A. We never really got an explanation why it was suspended.
- 15 It was suspended.
- 16 Q. After the grant was suspended -- well, withdrawn. At the
- 17 time the grant was suspended on June 27, 2003, were there any
- 18 monies owed to vendors for the grant?
- 19 A. I would assume so, yes.
- Q. Do you have any idea what the number was?
- 21 A. No, sir, I don't.
- 22 Q. After the grant was shut down on June 27, 2003, isn't it a
- 23 fact that Dr. Karron advanced money to CASI for the purposes of
- 24 the grant?
- 25 A. I don't have any recollection of that, sir.

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1 Q. Were you involved at any time after the grant was shut down

- with the telephone conference with Marilyn Goldstein?
- 3 A. No, sir.
- 4 Q. Do you know who Marilyn Goldstein is or was at that time?
- 5 A. Yes.
- 6 Q. And who was Marilyn Goldstein?
- 7 A. Marilyn Goldstein I believe was the manager of grant
- 8 compliance with ATP. I don't remember her specific title.
- 9 Q. And did you notify Hope Snowden in July, July 24, 2003 in
- 10 regards to Dr. Karron? I'm sorry.
- 11 THE COURT: What's the question?
- MR. RUBINSTEIN: I will withdraw the question, Judge.
- 13 Q. Were you aware that Dr. Karron advised Hope Snowden that he
- 14 had arranged an emergency credit line to apply to the grant?
- 15 Are you aware of that, sir?
- 16 A. No, sir, I'm not.
- 17 Q. Did you receive an e-mail on July 24? This is marked as
- 18 Defendant's E for identification. Did you receive that e-mail
- 19 indicating that Dr. Karron was taking a line of credit to
- advance to the grant?
- 21 A. No, sir, I don't remember seeing this e-mail. And as I
- 22 testified earlier, that casi.net e-mail address was one I
- 23 didn't use.
- 24 Q. Is it your testimony, sir, that you as the business manager
- of CASI had an e-mail address and you did not check your

- 1 e-mails?
- 2 A. Yes. I had a home e-mail address, and that's where we were
- 3 communicating. Periodically they would send things to
- 4 casi.net. They set up the account, they put a password on it.
- 5 And, as you know, flopping from one mail service to another is
- 6 a bit of a hassle, so I didn't use the casi.net service.
- 7 Q. But you were aware, were you not, sir, that there was an
- 8 e-mail address to you? You are aware there was one?
- 9 A. I was aware they set one up with a password that I didn't
- 10 know, so ...
- 11 Q. And were you aware that e-mails were coming to you?
- 12 A. Not there.
- 13 Q. 2008 is the first time that you became aware of the fact
- that e-mails were sent to you at casi.net?
- 15 A. I have not seen this e-mail before.
- 16 Q. Did you see any e-mails that were sent to you?
- 17 A. Not to my recollection, casi.net, no.
- 18 Q. Well, when the grant was suspended June 27, 2003, how much
- 19 money was in the accounts of NIST or CASI?
- 20 A. I don't recall.
- 21 Q. Well, are you aware that there were people still working at
- 22 CASI after the grant was suspended?
- 23 A. Yes.
- 24 Q. And did you receive monies after the grant was suspended?
- 25 A. I believe so, I did, yes.

8697KAR4 Benedict - cross

1 Q. And did other people get paid from CASI after the ATP grant

- 2 was suspended?
- 3 A. I believe so.
- 4 Q. And are you aware of suppliers who had already delivered
- 5 product to CASI that were paid after the grant was suspended?
- 6 A. I don't specifically remember any, but I can't say that
- 7 that didn't happen.
- 8 Q. And did you have contact with Belinda Riley after the grant
- 9 was suspended?
- 10 A. Yes, sir, I did.
- 11 Q. And did you indicate to Belinda Riley that \$46,000 was
- 12 deposited by Dr. Karron and that 21,000 inkind he's claimed for
- 13 his FMV of his preowned equipment meets this obligation? Did
- 14 you tell that to Belinda Riley in an e-mail?
- 15 A. I don't recall that, sir, no.
- 16 Q. Well, let me show you this document.
- 17 I'm going to show you what's been marked for
- 18 identification Defendant's T.
- 19 THE COURT: Defendant's what?
- 20 MR. RUBINSTEIN: T as in Thomas, your Honor.
- Q. I show you what's been marked as Defendant's T, sir, and
- 22 ask you if you recognize this e-mail.
- 23 A. Yes, sir, I do.
- Q. Is that an e-mail that you sent to Frank Spring?
- 25 A. Yes, it is.

8697KAR4 Benedict - cross

1 Q. Did you send that on July 28, 2003?

- 2 A. Yes, I did.
- 3 Q. It's after the suspension of the grant?
- 4 A. Yes.
- 5 MR. RUBINSTEIN: We offer this into evidence.
- 6 MR. EVERDELL: No objection.
- 7 THE COURT: No objection?
- 8 MR. EVERDELL: No.
- 9 THE COURT: Exhibit T is admitted in evidence.
- 10 (Defendant's Exhibit T received in evidence)
- 11 MR. RUBINSTEIN: May I read this to the jury, your
- 12 Honor?
- 13 THE COURT: Yes.
- 14 MR. RUBINSTEIN: This is defendant's T in evidence.
- 15 It's from Bob Benedict at ec.rr.com to Frank Spring.
- 16 Let me put it up on the Elmo.
- 17 No, I'll read it. It's to Frank Spring. It says,
- 18 "Still sparring with NIST on the 67K."
- 19 67K means 67,000, correct?
- 20 A. Yes, sir.
- 21 Q. "I still contend the 46K he deposited and the 21K inkind he
- 22 claimed for the FMV of his preowned equipment meets this
- 23 obligation. We're supposed to get Belinda's preliminary audit
- 24 report today or tomorrow, and once that's in, we will know what
- 25 we plan to do and get ourselves operational again."

1 Did you send that e-mail, sir?

- 2 A. Yes, sir.
- 3 Q. In fact you were aware when you sent this e-mail that Dr. K
- 4 had deposited at least \$46,000, correct?
- 5 A. Apparently, yes, sir.
- 6 Q. And you also were aware that you were claiming at least
- 7 21,000 in kind for the cofunding, correct?
- 8 A. Yes, sir.
- 9 (Continued on next page)

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SOUTHERN DISTRICT REPORTERS, P.C.

869zkar5 Benedict - cross

1 Q. Now, you offered to handle the audit negotiations on behalf

- of CASI, did you not?
- 3 A. You don't handle audit negotiations. You work with the
- 4 auditors. I was part of the team that was doing that.
- 5 Q. Well, did you advise Dr. Karron that you had prior
- 6 experience with audit negotiations?
- 7 A. Yes, sir.
- 8 Q. And that you had been successful in the past in audit
- 9 negotiations?
- 10 A. Yes, sir.
- 11 Q. And in fact, Doctor -- do you know a man named Mel Spitz?
- 12 A. No, sir.
- 13 Q. Did Dr. Karron retained you to handle the audit
- 14 negotiations, sir?
- 15 A. No, sir.
- MR. RUBINSTEIN: No further questions.
- 17 THE COURT: All right. Redirect?
- 18 MR. EVERDELL: Very briefly, your Honor.
- 19 THE COURT: Could I ask a question before we get to
- 20 redirect? On your -- in the 3500A, the affidavit you signed
- 21 for the agency?
- 22 MR. RUBINSTEIN: Judge, I can't hear you. Sorry.
- 23 THE COURT: The affidavit you signed for the agency,
- 24 I'm trying to get the date, somewhere around the 15th of
- 25 November, 2004?

869zkar5 Benedict - cross

- 1 THE WITNESS: Yes, sir.
- 2 THE COURT: Reviewing that affidavit, does that
- 3 refresh your recollection in any way that the meeting you met
- 4 Dr. Karron at was in October, not the Spring of 2001?
- 5 THE WITNESS: It could have been.
- 6 THE COURT: If you want to look at the --
- 7 THE WITNESS: I don't have it, sir.
- 8 THE COURT: -- exhibit?
- 9 THE WITNESS: I think the gentleman took it back.
- MR. RUBINSTEIN: Here you go.
- 11 THE COURT: I just want to --
- 12 (Provided to the witness by Mr. Rubinstein)
- 13 THE WITNESS: Yes, sir.
- 14 THE COURT: Does that --
- 15 THE WITNESS: That is the correct date.
- 16 THE COURT: All right.
- 17 THE WITNESS: It must have been the fall conference,
- 18 not the spring conference.
- 19 THE COURT: The kickoff meeting.
- THE WITNESS: Yes.
- 21 THE COURT: Okay. That's all I wanted.
- 22 REDIRECT EXAMINATION
- BY MR. EVERDELL:
- Q. All right, Mr. Benedict, I believe you testified on direct
- and cross-examination that you told the defendant that he could SOUTHERN DISTRICT REPORTERS, P.C.

869zkar5 Benedict - redirect

1 not use ATP funds to pay for rent; is that right?

- 2 A. Yes, sir.
- 3 O. Do you remember, approximately, how many times you told him
- 4 that?
- 5 A. Half a dozen times.
- 6 Q. You testified also about getting approval for ATP expenses
- 7 that were not in the budget?
- 8 A. Yes, sir.
- 9 Q. How do those approvals come; are they orally or in writing?
- 10 A. In writing.
- 11 Q. Are they ever oral?
- 12 A. No.
- 13 Q. You --
- 14 A. They're not binding if they're oral.
- 15 Q. Okay.
- THE COURT: Sorry, I didn't hear your answer.
- 17 THE WITNESS: I said they're not binding. If you get
- oral authorization, do something, until you get written
- 19 authorization it's not binding.
- 20 Q. I believe you were also shown on cross-examination a draft
- of a benefits plan?
- 22 A. Yes, sir.
- Q. That's exhibits 00?
- 24 A. Yes, sir.
- Q. You said you worked on that, is that right?

SOUTHERN DISTRICT REPORTERS, P.C.

869zkar5 Benedict - redirect

- 1 A. Yes.
- Q. All right I want to show it to you. Is that the draft plan
- 3 that you said you worked on?
- 4 A. Yes, sir.
- 5 Q. What is the date of that draft plan, just right at the top
- 6 of the exhibit?
- 7 A. July 2nd, 2003.
- 8 Q. I'll take that back. That date, July 2nd, 2003, is that
- 9 before or after the grant was suspended?
- 10 A. After.
- 11 Q. You were also asked about utilities, I believe, on
- 12 cross-examination?
- 13 A. Yes, sir.
- 14 Q. To your knowledge, did any of the approved budgets for CASI
- 15 contain a line item for utilities?
- 16 A. No, sir.
- 17 Q. And you asked very recently on cross-examination about an
- 18 e-mail where you discussed an in kind --
- 19 A. Uh-huh.
- 20 Q. -- share for the defendant?
- 21 A. Yes.
- 22 Q. Was that revision, budget revision that you discussed in
- 23 the e-mail, ever approved?
- 24 A. No, sir.
- MR. EVERDELL: No further questions.

SOUTHERN DISTRICT REPORTERS, P.C.

869zkar5 Benedict - redirect

1 MR. RUBINSTEIN: May I, your Honor?

- THE COURT: Yes, you may.
- 3 MR. RUBINSTEIN: Thank you.
- 4 RECROSS EXAMINATION
- 5 BY MR. RUBINSTEIN:
- 6 Q. OO, is it your testimony, sir, that OO, this employees
- 7 benefit program, was created on July 2nd, 2003?
- 8 A. That's the date that's on there, yes, sir. I don't
- 9 remember the date it was created.
- 10 Q. Well --
- 11 A. It wasn't written all on that one day. It was something I
- 12 had been working for a while.
- 13 Q. I mean, this wasn't created because the grant was
- 14 suspended, was it, sir?
- 15 A. No. This was -- it was part of the -- there were no
- 16 procedures in place. We needed to get something in, some
- 17 procedures in writing so you could support the medical charges
- 18 that were being incurred.
- 19 Q. Did Dr. Karron say, you better sneak in a --
- 20 A. No, sir.
- 21 Q. -- a benefit, or our grant will be suspended, did he?
- 22 A. No, sir.
- MR. EVERDELL: Objection.
- 24 THE COURT: Objection sustained.
- MR. RUBINSTEIN: No further questions.

SOUTHERN DISTRICT REPORTERS, P.C.

869zkar5 Benedict - recross

- 1 THE COURT: Anything else?
- MR. EVERDELL: Not from the government, your Honor.
- 3 THE COURT: All done? All right, witness is excused.
- 4 Next witness.
- 5 (Witness excused)
- 6 MR. KWOK: At this time, your Honor, the government
- 7 would like to read into the record a proposed stipulation.
- 8 THE COURT: All right. What's the number, stipulation
- 9 what?
- 10 MR. KWOK: It's marked for identification as
- 11 Government exhibit 902.
- 12 THE COURT: Read it.
- 13 MR. KWOK: United States of America versus Daniel B.
- 14 Karron, defendant. It is hereby stipulated and agreed by and
- 15 among the United States of America by Michael J. Garcia, United
- 16 States Attorney for the Southern District of New York, Steve
- 17 Kwok and Christian Everdell, Assistant United States Attorneys
- 18 of counsel, and defendant Daniel B. Karron, by and with the
- 19 consent of his attorney, Ronald Rubinstein, Esquire that: One,
- 20 the documents contained in the compact disk CD marked for
- 21 identification as government Exhibit 1000 and 1000 and --
- 22 1,000A and identified as e-mail for AUSA dated 5/31, 2008, are
- 23 authentic e-mails created at or near the time shown on those
- documents are what they purport to be, and are admissible as
- 25 offered by the government under Federal Rules of Evidence

869zkar5 Benedict - recross

- 1 801(d)(2) and 901; two, if relevant, government exhibits 1000
- 2 and Exhibit 1000A may be received in evidence.
- 3 It is further stipulated and agreed that the
- 4 stipulation may be received in evidence as a government exhibit
- 5 at trial, and it's dated July, I'm sorry, June 2nd, 2008 New
- 6 York, New York, and is signed on behalf the United States by
- 7 Steve Kwok, and on behalf Daniel B. Karron, by Ronald
- 8 Rubinstein, Esquire.
- 9 Your Honor, at this time government moves for the
- admission of government exhibit 902, 1000, and 1000A.
- 11 THE COURT: Exhibit 902, excuse me, 902, and exhibits
- 12 1000, 1000A are admitted in evidence.
- 13 (Government's Exhibits 901, 1000 and 1000A received in
- 14 evidence)
- 15 THE COURT: Are you going to play those?
- 16 MR. KWOK: Yes, your Honor. Mr. Everdell will publish
- some of those e-mails to the jury.
- 18 MR. EVERDELL: If we could have Government's Exhibit
- 19 203 on the screen, please. If we can highlight the third
- 20 paragraph.
- 21 MR. RUBINSTEIN: Your Honor, I ask that the entire
- 22 Exhibit be read.
- THE DEPUTY CLERK: 203?
- MR. RUBINSTEIN: In rule of completeness.
- THE COURT: All right.

SOUTHERN DISTRICT REPORTERS, P.C.

869zkar5	Benedict -	recross

1 MR. EVERDELL: Your Honor, the entire exhibit is in

- 2 evidence now. The jury can refer to it as they --
- 3 MR. RUBINSTEIN: But they have not heard it.
- 4 THE COURT: But they won't -- they will have copies in
- 5 the jury room, but they don't have copies in their books, I
- 6 don't think. Let's do it that way or by distribution.
- 7 MR. EVERDELL: All right. Start with 203. It's an
- 8 e-mail from Dr. D. B. Karron to Professor Schwartz. Dear
- 9 Professor Schwartz, I am in a very precarious position --
- 10 THE COURT: What date? Can we have a date for this?
- 11 MR. EVERDELL: Sorry. August 20th, 2003.
- 12 I am in a very precarious position in that the
- 13 government expects, demands and feels it is due the Joan Hayes
- 14 audit report. The grant specialist, Hope Snowden, told me in
- 15 no uncertain terms that the next things she needed to restart
- the grant were replacement and up to date SF269's and Joan's
- 17 audit report. Her attitude was we paid for it, we expect it
- 18 and it, and the SF269 cash reconciliations were holding things
- 19 up for the review as to how to restart the grant. I had
- 20 already issued the stop work order, and Joan went to Hope and
- got Hope's orders to complete payment or not.
- 22 THE COURT: Slow down a little bit.
- MR. EVERDELL: Yes, your Honor.
- 24 Hope used the same attitude wording that Joan had used
- with me, don't worry, we are paying for it. I went back to

869zkar5 Benedict - recross

1 Joan and asked her to tell Hope when she thought the audit

- 2 would be done. My comments to Joan were to the effect that
- 3 Hope was sore and angry. Joan's reply was that I don't have
- 4 any problems with Hope. We get along just fine and don't you
- 5 worry about problem with Hope.
- 6 I've always had a good relationship with Hope and the
- 7 government in general. This attitude sent chills up my spine
- 8 because it indicates that Joan clearly sees her role as being
- 9 the Government's mole, not my accountant. I also decided to
- 10 hold off shit canning her by sic-cing you on her because it has
- 11 tremendous potential to back fire on me given Hope and Joan's
- 12 cozy relationship. Joan has clearly attempted to cement her
- 13 relationship with the government against me and is possibly the
- 14 biggest obstacle to getting your our grant restarted. When I
- 15 asked Joan when she could get the audit report done, she
- 16 started back peddling from her position that the audit report
- 17 was done to a position that she needed to delivery, excuse me,
- 18 the preliminary results to me in person without Bob Benedict or
- 19 any one else on my team. And as soon as I made a date to visit
- 20 with her, she could give me a better sense of when she would be
- 21 done. She went out to say that this was, that it was ironic
- 22 that I should attempt to fire her and now I was asking her for
- 23 more work or to work faster. She laced into me with comments
- 24 that this was a 40K audit she was losing money and she could
- 25 finish it on her own time, and as such, she would not be

869zkar5	Benedict -	recross
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1 rushed. She kept saying she had orders from me, my letter from

- 2 Freddie, that she was to stop work. As such, she would work at
- 3 her pace and it was only her sense of duty to the government
- 4 that she would finish the audit at all. After the unusually,
- 5 after the unusually berating and obnoxious tugging on my
- 6 chains, didn't I say these things were going to happen? I
- 7 warned you, I told you, you did not listen, you thought you
- 8 could fire me, ha-ha, well, look who is begging now. You're
- 9 lucky I'm an honest auditor, not like so and so you had before.
- 10 I should have reported her before. The end of the conversation
- 11 was that Joan would contact Hope and give a completion date.
- 12 Two, Joan would report to me when she had promised a date to
- 13 Hope. 3, she would stick to that date.
- 14 I promised her I would send her a note ordering her to
- 15 complete the audit and she insisted on giving the audit results
- only to me and make certain I understood each and every
- 17 finding. She would not give the audit report to Bob, fax them
- 18 to my office, e-mail them or overnight them to any location
- 19 other than to CASI. She said she did not trust the people in
- 20 my office, would not intercept the findings and so on. I send
- 21 Joan orders to deliver the audit findings to Bob and he would
- 22 work with her to get this done. I have seen a stream of e-mail
- about the audit food notes that Joan wants me and only me to
- 24 write. At this point I don't know what I'm footing to. I Hope
- 25 Bob will send me a draft so I have a clue what I'm doing. My

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- 1 sense is that if I ask Joan to hurry up, she will slow down
- 2 even more. Since I have asked her to hurry up and that I am
- 3 out of town until September 1st, she won't complete until
- 4 September 1st. The worst news is that Marilyn Goldstein, the
- 5 grants manager, has indicated that what she has wanted was the
- 6 co-payment paid and her main problem was how to get it paid
- 7 during the suspension. I offered to pay some 67K of grant
- 8 bills pending, some of which are from vendors who may not even
- 9 get -- who may not even want to get paid. And she thought that
- 10 may solve the suspension issues, per amendment six. I asked
- 11 Bob to get this nailed down, i.e., a memo that payment of a
- 12 list of bills would restart the grant, and Marilyn would not
- 13 commit to this. So it is apparently another bear trap where we
- 14 throw away 67K and then get another bill, a bill for another
- 15 200K disallowed, and the match gets absorbed into disallowed
- 16 and we are still wedged and I'm almost completely out of
- 17 credit. Please talk to Bob Benedict for details on this very
- 18 dangerous situation. I am waiting abandoning the grant at this
- 19 point and forcing the government to try to collect one point
- 20 four million from me and make the grant enough of a train wreck
- 21 that they have to cooperate on finding a liveable solution for
- 22 all of us. It is that bad and I am ready to shove the
- 23 situation into such an unpalatable end that we get some
- 24 cooperation from them. Yes -- should I continue just to the
- 25 end of the e-mail, your Honor?

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- 1 THE COURT: Yes.
- 2 MR. EVERDELL: Okay. Yes, Joan Hayes was paid way
- 3 more than I was aware of, including a 1K retainer never
- 4 reflected in her billing. An extra payment on her last audit
- 5 invoice bringing the total paid to date for the audit of almost
- 6 13,500. If I give you the go ahead, we should sue to recover
- 7 for nonperformance \$13,500 and damages caused by
- 8 nonperformance, as well as anything else you can think of. Her
- 9 two sons are lawyers and auditors, and she has threatened that
- 10 if sued it would not cost her anything to defend herself with
- 11 her family. She has threatened to bury me in legal problems
- 12 should I try to interfere with her John Val John like mission
- 13 to put me out of business and get me disbarred at the federal
- 14 teet. At this point feel I have to reign you in and not appear
- 15 to the government to block Joan's completion of her appointed
- 16 task if she continues to hang on my neck with this audit and
- 17 won't commit to a completion date or misses her own completion
- 18 date, then I will give you the go ahead to drop an atomic bomb
- on her head, as well as certain legal death on myself.
- 20 Finally, I've been discussing a benefits retirement plan with.
- 21 And that concludes that e-mail.
- 22 THE COURT: All right. More slowly for me, all right.
- MR. EVERDELL: Yes, your Honor.
- 24 Next Government's Exhibit 204. This is an e-mail from
- D. B. Karron to several people, including Jerome Schwartz, date SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 August 12th 2003.
- 2 THE COURT: Has Joan Schwartz been or Mr. Schwartz
- 3 been identified in this case or --
- 4 MR. EVERDELL: Not yet, your Honor.
- 5 THE COURT: All right. Go ahead.
- 6 MR. EVERDELL: All right. Reading from the beginning
- 7 of the e-mail:
- 8 We are going to give Joan the boot, as it has to be
- 9 hard, fast and sufficiently threatening so she stops
- 10 collaborating with the Inspector General. But she does not
- 11 decide to turn State's evidence and really put me out of
- 12 business more than she has already. Since she knows how to get
- 13 under my skin, and I like to be the nice guy, I propose that a
- 14 partnership resolution disengaging Joan and engaging Spitz be
- 15 produced, and a discharge order that will get her off my case
- 16 and she will be happy to turn over her work papers and wash her
- 17 hands of me.
- 18 I propose, one, she be held to the letter of her
- 19 engagement letter, copy attached, she was to change -- charge
- 20 \$10,000. She was overpaid. She should refund that. Two, she
- 21 never completed the audit by the engagement letter deadline.
- 22 She should refund \$10,000. Three, she missed so many tax
- 23 deadlines that she should be discharged as a tax attorney of
- 24 record, be held liable for late fees and so on. Four, answer
- 25 charges of malfeasance or stupidity my spectacular over payment

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- of 120 to 150K withholding taxes, for example; five, failure to
- 2 institute any kind of tax shelters; six meddling in management
- 3 making de facto management decisions without written
- 4 authorization or framing the problem and asking for written
- 5 authorization; seven, using personal knowledge gained from
- 6 being on-site at CASI virtually daily at some points; i.e.,
- 7 personal residence, medical knowledge gained from using her
- 8 knowledge of my personal taxes, spending too much time being
- 9 friends with employees and using the gossip to disallow costs
- 10 to the government; eight, she should be held responsible for
- 11 disallowance of the cost of her students benefits, her student
- 12 was paid, but she later disallowed; nine, refusal to certify
- 13 CASI business process after expending tremendous resources to
- 14 recreate books; 10, government using the disallowed she shows
- on the books as a basis for deception on the part of the P. I,
- 16 as he should have shown prior to doing the SF269 in error
- 17 because it is so clear on the books, the effort to recreate the
- 18 books has back fired and it appears that the P. I made willful
- 19 statements of fact evident on their own books, has the audit
- 20 report been completed on time. This apparent bad faith would
- 21 have been voluntarily correction instead of discovery by the
- 22 Inspector General; 11, her failure to complete anything on time
- 23 has caused the effective bankruptcy of her client.
- 24 THE COURT: All right. 2003 and 2004. All right, any
- 25 more?

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- 1 MR. EVERDELL: Yes, your Honor.
- 2 MR. KWOK: Yes, your Honor.
- 3 MR. EVERDELL: One more, your Honor. This is
- 4 Government's Exhibit 213.
- 5 THE COURT: Dates on these?
- 6 MR. EVERDELL: Yes, this is an e-mail from Dr. D. B.
- 7 Karron to someone named T. L. Lorraine at AOL.com. It's dated
- 8 December 18th, 2002.
- 9 THE COURT: What was the date of -- 2004?
- 10 MR. EVERDELL: This e-mail?
- 11 THE COURT: Yes.
- MR. EVERDELL: December --
- THE COURT: 204, excuse me.
- MR. EVERDELL: Oh 204 was --
- THE DEPUTY CLERK: August 12th, '03?
- 16 THE COURT: August 12th.
- 17 THE DEPUTY CLERK: August 12th, '03.
- MR. EVERDELL: August 12th, 2003.
- 19 THE COURT: Thank you.
- 20 MR. EVERDELL: This one is December 18th, 2002.
- 21 Lorraine, I understand your position fully. If you
- 22 can provide material and vital assistance to CASI, me, during
- 23 our audit, then you will have a job. I have real concerns as
- 24 to whether you can provide this help, and if I can pay you what
- 25 you are worth. My concerns are that you have the technical

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1 expertise and the patience to fully exercise it. This is major

- 2 bookkeeping and accounting crap. I stand to lose a lot of
- 3 money out of pocket. You will be working with our auditor and
- 4 accountant Joan Hayes preparing documents for her audit. I
- 5 have a big list of things that need to be prepared. I need
- 6 mountains of documentation organized, I need lots of things
- 7 followed through that the auditor and I have discussed. My
- 8 failure to have these things ready for her will mean I have to
- 9 pay for these things out of pocket. I am looking at a grant
- 10 short fall of about 60K which I have to make up out of my
- 11 pocket. I have a mountain of business records my secretary was
- 12 supposed to organize for the audit. She did not do it and now
- 13 I have to pay for it. I need someone to do it. I was going to
- 14 hire a temp to do it, I will cover you to do it.
- 15 Now, you are a difficult person to work with. You are
- 16 a pain in the butt, you drink, you smoke, you are combinative
- 17 and argumentative, you are spaced out, you forget things. You
- 18 talk too much when you don't know what you're talking about.
- 19 You say too little when you really know what you're talking
- 20 about. I was not going to engage you after all the crap at
- 21 Janet's, I was going to engage you after the meeting with
- 22 Satava. I thought it was more important that you get a more
- 23 high paying job with these folks at Greenbelt so I did not
- 24 discuss it with you. I discussed your involvement with friends
- 25 who know you and most railed against it. I --

869zkar5

Benedict - recross

- 1 THE COURT: I'm trying to read as you do it. I think
- 2 the jury may be with you. The person who someone moved the
- 3 e-mail, so you can't read it. Could you move it back so we
- 4 can --
- 5 MR. EVERDELL: I think we're at the -- okay, the last
- 6 was friends who know you and most railed against it. Now we're
- 7 on, it may destroy.
- 8 It may destroy our friendship by my bringing you on as
- 9 an employee. I don't mix friendship and employment. I don't
- 10 think it is a good idea that we have a personal relationship
- 11 while you work for me. It is not a good idea that you stay in
- 12 my bed if you work here a few days a week. I live in a
- 13 goldfish bowl. Nevertheless, if you help me through this audit
- 14 for the next month, give me a solid few weeks intense work and
- 15 learning and I survive this grant, you will have a job. Peter
- 16 and I need to focus on getting a number of new grants. A lot
- 17 of writing needs to be done. A lot of research needs to be
- 18 done. A lot of travel between New York and D.C. needs to be
- 19 done. If you impress myself, my board and Peter, you will
- 20 become a partner not just an employee. One of the things we
- 21 need to do is formalize the employee benefit plan so as to make
- 22 a T* friendly company, and formalize the employee equity
- 23 participation plan I have in mind for sometime now. These
- 24 there are significant problems you can fix. Joan will brief
- 25 you on them and we will dig in and you work on them with me

869zkar5 Benedict - recross

- 1 then and on your own. I need to focus on research and our 10
- 2 report due December 31st. We are falling behind on our
- 3 milestones because of my continuing distraction with the audit
- 4 and business problems. If you become a problem to manage, you
- 5 will be asked to leave. If you can do what we need done, you
- 6 will become a partner and you participate in each new grant and
- 7 contract we win. I suggest you give up the hotel room, stay
- 8 here with me a few days a week and I will ask Windy to put you
- 9 up at her house. You can get your cell phone calls forwarded
- 10 to there. I am thinking of opening a retreat office at Wendy's
- 11 house, so I can get some work done now that she has thrown
- 12 Corrine out. If I promise to cover your rent, I may formally
- 13 move into Windy's house so that I can collect rent on my
- 14 apartment from the grant. In that case, you will be staying
- 15 both here and at Windy's and so there are two place for two
- 16 people. I will make a lease with Windy and make like I only
- 17 keep a folding bed on 33rd Street. If ATP buys into this idea,
- 18 then I can charge my rent on the apartment to the grant and pay
- 19 my mortgage. So I'm contradicting most of my previous
- 20 statements by taking you on and into my life, but if I don't
- get these problems solved, I won't have a grant.
- 22 Further, I won't make a contract with you until I am
- 23 convinced you are the girl for the job. You have to spend a
- 24 lot of time with the auditor fixing each audit problem. You
- 25 have to learn my electronic records system and how to use it.

869zkar5 Benedict - recross

- 1 You need to master our bookkeeping style and record keeping.
- You have to learn, if you are not already familiar with them,
- 3 the FAR, Federal Acquisition Rules, and cost principles.
- 4 Convince me you are on my side and the girl for the gig and it
- 5 is yours for real. I have been burned, burn too many times in
- 6 the past. I will help you out out of pocket, as best I can
- 7 while you are with me, but without formal approval for a
- 8 subcontract with you from the feds, I can't make a formal offer
- 9 to you. I was yelled at by my grant specialist at NIST over
- 10 making personnel changes without their approval. One thing you
- 11 will do is interface with me at NIST and learn how to navigate
- 12 multiple rolling budget changes with them so you can get your
- 13 approval to work under my grant. If you do this right, you
- 14 will be working directly with the government and write your own
- 15 ticket with me them, plus end up with equity for in the company
- 16 when we finish the employee benefit plan, which you will help
- 17 write. Hugs Diane.
- 18 THE COURT: I thought this was supposedly -- I'm
- 19 sorry, I thought that this was from the defendant?
- 20 MR. EVERDELL: It is from the defendant's e-mail
- 21 address, D. B. Karron.
- 22 THE COURT: I see, all right.
- 23 All right, do you need to read anything else?
- MR. KWOK: One moment, your Honor?
- MR. RUBINSTEIN: Are they excluding the next --

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869zkar5 Benedict - recross

1 there's another, there is the original message there. Are

- 2 we --
- 3 MR. EVERDELL: Just --
- 4 THE COURT: You want something else read in?
- 5 MR. RUBINSTEIN: I don't know, Judge. I'm just asking
- 6 if that's part of --
- 7 THE COURT: I couldn't hear your answer. You want
- 8 something read in?
- 9 MR. RUBINSTEIN: It's not necessary, your Honor.
- MR. EVERDELL: Your Honor, the government rests.
- 11 THE COURT: All right, the government rests.
- 12 Is defense ready to put on a case?
- MR. RUBINSTEIN: Let me -- can I step outside, your
- 14 Honor?
- THE COURT: All right. What?
- MR. RUBINSTEIN: Okay.
- 17 THE DEPUTY CLERK: One of the jurors --
- 18 THE COURT: We'll take a jury break, Mr. Rubinstein.
- 19 We'll take a jury break. Okay. 10 minutes.
- 20 (Recess)
- 21 THE COURT: Are we ready for the jury?
- MR. KWOK: Yes, your Honor.
- THE COURT: Get the jury.
- 24 (Jury present)
- THE COURT: All right, please be seated.

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869zkar5

- 1 Mr. Rubinstein.
- 2 MR. RUBINSTEIN: Yes. My assistant went to get the
- 3 witness, your Honor.
- 4 THE COURT: All right.
- 5 MR. RUBINSTEIN: Sorry. I'm sorry. The witness is
- 6 sitting in the back of the courtroom like I told him to. I
- 7 forgot I told him.
- 8 THE COURT: All right.
- 9 THE DEPUTY CLERK: Watch your step.
- 10 WILLIAM NICOLAI,
- 11 called as a witness by the defendant,
- having been duly sworn, testified as follows:
- 13 DIRECT EXAMINATION
- 14 BY MR. RUBINSTEIN:
- THE COURT: All right, go ahead.
- 16 Q. What is your business or occupation, Mr. Nicolai?
- 17 A. I am a vice-president of Halstead Property, which is a real
- 18 estate company in New York.
- 19 Q. And are you licensed?
- 20 A. Yes, I am.
- 21 Q. And how are you licensed?
- 22 A. Licensed as a real estate broker.
- 23 Q. And how long have you been so engaged?
- 24 A. I've been a broker at Halstead since 1989.
- 25 O. And before that?

1 A. I used to develop sports programs for kids with cerebral

- 2 palsy.
- 3 Q. Now, and where is your brokerage located?
- 4 A. We're in Manhattan. My particular office is at 77th and
- 5 Third.
- 6 Q. And how long have you been in Manhattan as a real estate
- 7 broker?
- 8 A. My whole career as a broker.
- 9 Q. And as a broker, do you make brokers appraisals?
- 10 A. We do brokers appraisals, yes.
- 11 Q. And what is a brokers appraisal?
- 12 A. Brokers appraisal would be, basically, the same thing as an
- 13 appraiser would do, but we're not certified by the State. We
- 14 use our knowledge, we use all of the same information and same
- sources to arrive at a price for an apartment.
- 16 Q. And do you do that -- and why do you do that?
- 17 A. We do it quite often when somebody comes to us and asks if
- 18 we'd like to sell their apartment, or they tell us they're
- 19 thinking about selling an apartment, what would it be worth or
- 20 sometimes for estates when somebody has died and the estate
- 21 needs some sort of a value of the property.
- Q. Do you know the defendant, Dr. Karron?
- 23 A. I met him, yes. He lives in my building.
- Q. And what building is that, sir?
- 25 A. In Kips Bay, 300 East 33rd Street.

- 1 Q. And how long have you lived there?
- 2 A. I've lived there since 1984.
- 3 Q. And do you have --
- 4 A. I'm very stable. What?
- 5 Q. Do you have any position with the building?
- 6 A. None whatsoever.
- 7 Q. And have you have you had listings from the building?
- 8 A. I've sold at least 20 apartments there.
- 9 Q. And did you have occasion to list Dr. Karron's apartment,
- 10 apartment 4N?
- 11 A. Yes, I did.
- 12 Q. And where -- how did you -- tell the jury how you go about
- 13 listing?
- 14 A. How I what?
- 15 Q. How do you go about -- did you have an exclusive?
- 16 A. Yes, I had the exclusive on the listing.
- 17 Q. And what does that mean?
- 18 A. That means that I was the one broker that controlled the
- 19 apartment, and anybody who wanted to see it, every broker had
- 20 to call me and arrange to see it through me. I was the
- 21 controlling broker.
- 22 Q. And how are you paid as a broker?
- 23 A. We're paid a commissioning based on the sale. If you sell
- it as a co-broke, your company splits the commission. If you
- 25 sell it yourself, your company gets the whole commission and SOUTHERN DISTRICT REPORTERS, P.C.

- 1 it's divided with your company.
- Q. And you get a set amount or percentage of the sales price?
- 3 A. It's percentage of the sales price.
- 4 Q. So the higher you sell it for the more you make?
- 5 A. Yes.
- 6 Q. Now, did you have occasion to list Dr. Karron's apartment?
- 7 A. Yes, I did.
- 8 Q. And what when was that?
- 9 A. You mean what price?
- 10 Q. When?
- 11 THE COURT: When are we talking about?
- 12 A. Oh, we -- I'm sorry.
- 13 THE COURT: When?
- 14 Q. Yeah. When did you list the apartment?
- 15 A. I think it was probably last October, something like that.
- 16 Q. And what did you list it at?
- 17 A. We list it at \$650,000.
- 18 Q. And what were apartment, comparable size apartments selling
- 19 for at that time in that location?
- 20 A. Comparable apartments were selling in the seven's.
- 21 Q. And when you say seven --
- 22 A. 700's, yeah, seven and a quarter, 740, 750.
- 23 Q. Thousand?
- 24 A. Hundred thousand, yes. And we thought that -- we thought
- 25 this was a high price, but we thought we'd get people in and

- 1 see if we could get more money, because my job is basically to
- 2 get as much money as I possibly can for the apartment. So we
- 3 listed at 650,000 which I thought was high.
- 4 Q. And why if similar apartments in the same building were
- 5 selling for over 700,000, why did you list this apartment for
- 6 \$650,000?
- 7 A. Dr. Karron had taken a residential apartment and basically
- 8 turned it into a laboratory. There were really no vestiges of
- 9 what you would consider as a, as a normal residential
- 10 apartment. It was, basically, all lab. It had desks built all
- 11 around the apartment, no things like sofas, just kind of office
- 12 chairs where you could pull up to computers and monitors.
- 13 There was a, basically, a mattress on the floor and a hammock
- 14 running across the room where people could sleep, and it was
- 15 basically it. The rest of it is all work. And we felt that it
- 16 would take a lot of money to convert this apartment back
- 17 because of the -- back to a residential apartment because of a
- 18 lot of things he did to it.
- 19 Q. And did you, eventually, did you show this apartment to
- 20 people?
- 21 A. I showed it a lot.
- 22 Q. And did you eventually find a buyer?
- 23 A. I did find a buyer, yes.
- Q. And when was that, sir?
- 25 A. We found a buyer, I guess earlier this year.

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 Q. And had, from the time you started listing the apartment in
- 2 October, till the time you found a buyer, did you change the
- 3 offer price?
- 4 A. We lowered it to 610,000, and we had a little more interest
- 5 in it, but I showed it at least -- I must have shown it 40
- 6 times.
- 7 Q. And what was the eventual sales price for this apartment?
- 8 A. Eventual says price was 510,000, but it was all cash. We
- 9 didn't have to get a bank involved into it, so we didn't have
- 10 to worry about an appraisal coming or anything like that. And
- 11 it was bought by somebody on board because there were certain
- 12 circumstances regarding the apartment that it just worked out
- 13 well to have somebody on the board buy it. Now, he found it
- 14 because I had listed the apartment in the laundry room, not
- 15 because, you know, because he knew anything about it. He saw
- 16 it listed and came to see it and expressed an interest in it.
- 17 Q. And does this person own other apartments in the building?
- 18 A. Yes, he does, and he lives in the building.
- 19 MR. RUBINSTEIN: I have no further questions.
- 20 THE COURT: Any cross-examination?
- 21 CROSS EXAMINATION
- 22 BY MR. KWOK:
- 23 Q. Good afternoon, Mr. Nicolai.
- 24 A. Hello.
- Q. Have you heard anything about the Advanced Technology SOUTHERN DISTRICT REPORTERS, P.C.

869zkar5 Nicolai - cross

1 Program; do you know anything about it?

- 2 A. No, I don't.
- 3 Q. Do you know about the rules and regulation governing this
- 4 program called Advanced Technology Program?
- 5 A. I don't know what it is.
- 6 Q. Did you have any dealings at all with a company called
- 7 CASI?
- 8 A. No.
- 9 Q. Around 2001 to 2003?
- 10 A. No.
- MR. KWOK: No further questions.
- 12 THE COURT: Anything further?
- MR. RUBINSTEIN: No, your Honor.
- 14 THE COURT: All right, you're excused. Next witness.
- 15 THE WITNESS: Thank you.
- 16 (Witness excused)
- 17 MR. RUBINSTEIN: Your Honor, defense calls John Mason.
- 18 THE COURT: All right.
- 19 JONATHAN MASON,
- called as a witness by the defendant,
- 21 having been duly sworn, testified as follows:
- 22 DIRECT EXAMINATION
- 23 BY MR. RUBINSTEIN:
- 24 THE COURT: Please proceed.
- Q. Mr. Mason, good afternoon?

SOUTHERN DISTRICT REPORTERS, P.C.

869zkar5 Mason - direct

- 1 A. Good afternoon.
- 2 Q. Did we ever meet before?
- 3 A. Just today.
- 4 Q. And what is your business and occupation, sir?
- 5 A. I'm a carpenter, builder.
- 6 Q. And do you know the defendant, Dr. Karron?
- 7 A. I do.
- 8 Q. And do you see him in court?
- 9 A. I do.
- 10 Q. And where do you see him?
- 11 A. (Pointing)
- 12 MR. RUBINSTEIN: Indicating the defendant, your Honor?
- 13 THE COURT: Yes, the witness has identified the
- defendant, the record will so reflect.
- 15 MR. RUBINSTEIN: Excuse me, your Honor. I have to get
- 16 something from the witness.
- 17 Q. Now, what is your business and occupation please?
- 18 A. I'm a builder.
- 19 Q. And when did you meet Dr. Karron?
- 20 A. About three years ago.
- Q. And do you have accompany?
- 22 A. Yes, I do.
- Q. And what's the name of your company?
- 24 A. Bator Bintoer, Incorporated.
- 25 Q. And how long?

869zkar5 Mason - direct

1 THE COURT: I'm sorry, I couldn't catch the name.

- THE WITNESS: It's Bator Bintoer.
- 3 O. And how long have you had that company?
- 4 A. 15, 17 years.
- 5 Q. And do you have a specialty?
- 6 A. Um, no. I'd say we're more general. We've done a few
- 7 different things and we sort of different times had, you know,
- 8 been focused on different things. But mainly now we just do
- 9 contracting, fix apartments, that sort of thing.
- 10 Q. And how did you come to meet Dr. Karron?
- 11 A. Someone I knew told me that a friend of theirs was looking
- 12 for some work to be done, and I went and introduced myself to
- 13 Dr. Karron.
- 14 Q. And did that result in you doing some work in apartment 1N
- 15 at 300 East 23rd Street?
- 16 A. It did.
- 17 THE COURT: 1N or 4N?
- 18 MR. RUBINSTEIN: I'm sorry, 4N, 4N.
- 19 O. And --
- THE COURT: Could we have a date?
- 21 Q. Yeah. Do you recall when it was that you, or withdrawn.
- 22 Did you make a written agreement or this was verbal?
- 23 A. No, there was a written agreement and I had to get, you
- 24 know, we got some insurance papers and things and -- I mean it
- was a little while ago. I'm not completely up on all my jobs SOUTHERN DISTRICT REPORTERS, P.C.

869zkar5 Mason - direct

- 1 from four years ago, but, you know.
- Q. Well that's a standard thing to get insurance when you do
- 3 work inside of --
- 4 A. Yeah.
- 5 Q. -- a coop building?
- 6 A. Yes, it is. Mostly to work in any coop building you have
- 7 to show your workers comp and work liability insurance.
- 8 Q. Do you have to meet with anybody from the building before
- 9 you are permitted in to work?
- 10 A. No. They just want to see the paperwork. I mean, I think
- 11 like I did -- I probably did at some point talked to some of
- 12 the building management at the beginning whenever we were
- 13 sorting out the paperwork, but.
- 14 Q. What kind of work did you do in apartment 4N?
- 15 A. Mostly I was working on -- I mean, I guess you'll know his
- 16 apartment was like a computer laboratory. So mainly we like,
- 17 we put lots of runners on the walls that held all the screens.
- 18 One of the big jobs that we did was we made a ventilating
- 19 system for the computers, because in the summer it had a lot of
- 20 problem with the computers overheating, so we like built racks
- 21 to put all the computers in. And then I built -- like we got
- these fans, extractor fans, you know, built it, sealed it off
- 23 so that the air from behind the computers was immediately
- 24 sucked out to the outside and, and air condition there could be
- 25 pulled in.

869zkar5 Mason - direct

- 1 Q. What is extractors?
- 2 A. Yeah, extract -- we are extracting the hot air from behind
- 3 the computers like and venting it outside. And then we had air
- 4 conditioners and stuff in the front of the computers so that,
- 5 you know, it would be cool air going through the computers.
- 6 Q. So what kind of -- did you have to do any structural work?
- 7 A. No, it wasn't structural work.
- 8 Q. Did you have to break the wall or anything?
- 9 A. No, no.
- 10 Q. And how long did the job take?
- 11 A. Well, I mean there was like -- as I said, there was a
- 12 couple of different things that I did. And I would say like
- 13 all in all, like it was like maybe a month's worth of work,
- 14 maybe a bit less. But, you know, it wasn't all done like one
- 15 day to the next, you know. It wasn't like in one thing. There
- 16 was like space, we did some I think one project. Then we
- 17 actually built the ventilation system once, and then we had to
- 18 retake it down, and like it didn't really work out, so like a
- 19 month later we like took it down and did it again, you know,
- and we changed the fans and stuff that we used.
- 21 Q. Now, did you fill out time sheets on this job?
- 22 A. I did, actually, which actually was a sort of a bone of
- 23 contention between me and Dr. Karron. Because I told him I
- 24 never filled out time sheets before. I mean, usually I make a
- 25 bill and, you know, that's, that's what it is. But Dr. Karron SOUTHERN DISTRICT REPORTERS, P.C.

869zkar5 Mason - direct

1 was quite insistent. So I think we did fill out time sheets.

- Q. And did you sign those time sheets?
- 3 A. I'm sure I did.
- 4 Q. Now, let me show you what's marked as defendant's MM for
- 5 identification. I show you what's been marked MM for
- 6 identification and ask you if you recognize what that document
- 7 is?
- 8 A. I do. It's a time sheet it's got my signature on.
- 9 Q. And how many of those did you fill out during the time you
- 10 were working there?
- 11 A. A bunch.
- MR. RUBINSTEIN: We offer MM into evidence, your
- 13 Honor.
- MR. KWOK: No objection.
- 15 THE COURT: Any objection?
- MR. KWOK: No objection.
- 17 THE COURT: No objection? MM is admitted in evidence.
- 18 THE DEPUTY CLERK: That's MM?
- MR. RUBINSTEIN: MM.
- THE COURT: MM.
- 21 (Defendant's Exhibit MM received in evidence)
- 22 Q. I show you what's marked as MM-1 and MM-2 and ask you if
- you recognize what is depicted in these exhibits?
- 24 THE COURT: What exhibits are you showing?
- MR. RUBINSTEIN: MM-1 and MM-2.

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869zkar5 Mason - direct

- 1 Q. Do you recognize anything in there, Mr --
- 2 A. Yeah, I do. I mean it's not the greatest of pictures, but
- 3 yeah I do, I do recognize this is like the main room with the
- 4 book shelves and the table and the stuff on the ceiling.
- 5 O. And --
- 6 A. Yeah, this is, this is -- and this one is like equipment.
- 7 O. Tell us what number you're looking at on the blue little
- 8 sticker?
- 9 A. Yeah. MM-1.
- 10 Q. Okay.
- 11 A. And these look like black and white shots of like his
- 12 apartment.
- 13 Q. Does that fairly and accurately reflect the way the
- 14 apartment looked at some point when you were working there?
- 15 A. Yeah. I mean, they're not the greatest pictures, but yeah,
- 16 I would say so. I mean, I can recognize the stuff.
- 17 Q. Do you see the work you did in those pictures?
- 18 A. Yeah.
- 19 MR. RUBINSTEIN: We offer MM-1 into evidence.
- MR. KWOK: No objection.
- 21 THE COURT: No objection? MM-1 is admitted in
- 22 evidence.
- 23 (Defendant's Exhibit MM-1 received in evidence)
- Q. All right. Now take a look at MM-2. First give me MM-1.
- 25 I'm going to put it up on the thing here. Is that one?

869zkar5 Mason - direct

- 1 A. Yeah.
- Q. Thank you. Okay. Can you describe what we're looking at
- $3 \quad in MM-1?$
- 4 A. Yeah, I guess this --
- 5 Q. Could you start on --
- 6 A. It's hard to tell. It could be either room, but both rooms
- 7 are pretty much the same. I think actually this is what -- so
- 8 called the bedroom because it has the book shelves still on.
- 9 Q. Did you do work in the bedroom?
- 10 A. Not so much. Actually, I did -- I -- actually, I did put
- 11 some -- I put these things on the ceiling, the slide thing on
- 12 the ceiling.
- 13 Q. And what's that for?
- 14 A. The ones I put on were for like -- we had like lights that
- 15 like went along the desk, and they were like long flexible
- 16 things. They attached to the track on the ceiling. And they
- 17 were so that you could direct the light to work on the
- 18 computer. You know, we had like a bunch, so they like were
- 19 behind you. And the idea was the, you know, you could like
- 20 adjust it to like, you know, adjustable lighting so that you
- 21 could have for people to work and stuff.
- 22 Q. All right. Now in MM-2, what do you recognize in that
- 23 photograph.
- 24 A. I mean it looks like the computer racks again. It's not
- 25 the easiest, 'cause it's black and white, not the easiest thing SOUTHERN DISTRICT REPORTERS, P.C.

869zkar5 Mason - direct

1 to see, but this one looks like some of the computer racks that

- 2 we built.
- 3 Q. Did you build those in the living room?
- 4 A. Yeah, built them in the living room.
- 5 MR. RUBINSTEIN: We offer MM-2 into evidence, your
- 6 Honor.
- 7 MR. KWOK: No objection.
- 8 THE COURT: MM-2 is admitted in evidence.
- 9 (Defendant's Exhibit MM-2 received in evidence)
- 10 Q. Could you describe what's depicted in the top photograph of
- 11 MM-2?
- 12 A. The top one, I don't know. I think I need a -- I mean, it
- 13 looks like equipment on the floor. I don't know what those
- 14 lights are on the side. I'm not quite sure what that is of.
- 15 Q. And how about the second photograph?
- 16 A. The second one looks like the racks that we built, like
- 17 it's kind of a closeup shot of them, but like it looks like we
- 18 built like these sliding racks where the computers they slide
- in, and that's where we had the ventilation system. Like what
- 20 he tried to do was put all the computers together and like --
- 21 and then like cool, like take the air out from behind the
- 22 computers so that it was like cooling them. So like you don't
- 23 need these big racks like standing up like, and they have the
- 24 screws on the front, the pieces slide in so that you can like
- 25 slide, they're kind of on like rails so you can like slide out

 SOUTHERN DISTRICT REPORTERS, P.C.

869zkar5 Mason - direct

- 1 the equipment to get to the wires in the back and stuff, and
- then slide the it back in, you know. So like if it needs to be
- 3 maintained or whatever, taken out, it can be taken out without
- 4 the whole thing being taken apart.
- 5 Q. Could you describe the computers?
- 6 A. Well, I'm not a computer expert, but there were a lot of
- 7 them, you know, and it was very professional looking, you know.
- 8 I mean, Dr. Karron made plans like for how everything was going
- 9 to go. And mostly they're like sort of like long kind of thin
- 10 machines that like slide like, they like, they're kind of built
- 11 for these racks I think, or the racks are built for them. But
- 12 they have like a face. They're quite like deep and stuff and
- 13 they like clip them onto these runners and they like slide into
- 14 the rack, so.
- 15 Q. And what time would you generally work at the apartment?
- 16 A. Nine to five. You know, the buildings have codes. You
- 17 can't -- you can like -- you have to abide by the building's
- 18 rules, which is usually nine to five.
- 19 Q. And were people working while you were there?
- 20 A. Yeah.
- 21 Q. Now, what other work did you do; did you do any other work
- in the living room?
- 23 A. In the living room, yes. What did we do? Well we did -- I
- 24 did the light system like, as I told you about in the bedroom.
- We had the lights that came down from the ceiling. We also put SOUTHERN DISTRICT REPORTERS, P.C.

869zkar5 Mason - direct

- 1 some racks up. One of them held like a air purifier and
- 2 things. I did like a lot of the, the stuff that Dr. Karron
- 3 couldn't really do, because it was physical and more
- 4 construction orientated like putting the rails up on the
- 5 ceiling. You know, you have to drill with the, with a concrete
- 6 drill and everything, 'cause the whole building is concrete,
- 7 and stuff like that.
- 8 But usually I was -- I mean, Dr. Karron made the
- 9 instructions and made the plans of what he needed, and then I
- 10 tried to accommodate him as best as I could.
- 11 Q. He drew the plans for your --
- 12 A. He made the plans -- yeah. He, I mean, he -- I didn't
- 13 design the stuff. He designed the stuff and I was just mainly
- installing and, you know, what came up. I'm not a computer
- 15 designer or anything.
- 16 Q. Now, your company, you set a price initially for the job?
- 17 A. Yeah.
- 18 Q. And what is that; what did you charge?
- 19 A. I'm sorry, I can't remember like off hand. I haven't
- 20 really -- I haven't been -- studied it, you know, for coming
- 21 here. I mean, I do a lot of jobs. I can't remember what
- 22 everything was. But I mean I -- we billed -- you know, there
- 23 were bills for everything so that I could get paid, and I'm
- 24 sure it must be all on record.
- 25 Q. And did you get paid?

869zkar5 Mason - direct

- 1 A. I did get paid, yeah.
- 2 Q. Now --
- 3 A. Sometime.
- 4 Q. Dr. Karron paid?
- 5 A. Yeah, I mean or the -- actually, usually I would actually
- 6 get paid by the accountant. You know, he would have to clear
- 7 the check whatever, but he would actually write the check, the
- 8 accountant would write the check or, you know, maybe someone he
- 9 was working for, who is working for him. Like sometimes I like
- 10 coordinated with Mat a lot. Mat's kind of like his right hand
- 11 person, does a lot of stuff for him.
- 12 Q. For Dr. Karron?
- 13 A. Yeah, for Dr. Karron. So I would, you know, like -- 'cause
- 14 Dr. Karron was often very busy. You know often like mainly I
- went through Mat for things, you know.
- 16 Q. All right. Did you have occasion to do any other work
- outside of the room where the computer was?
- 18 A. Yeah, we -- I changed the cabinet in the kitchen and the
- 19 sink cabinet, and that was pretty much the only thing we did in
- 20 there.
- Q. And did you charge separately for that?
- 22 A. Dr. Karron was very insistent that like that work had to be
- 23 paid by a check from himself, which he wrote, as opposed to the
- 24 accountant or anybody.
- Q. And let me show you -- I show you what's marked defendant's SOUTHERN DISTRICT REPORTERS, P.C.

	869zkar5 Mason - direct
1	MM-3. I show you what's been marked for identification as
2	defendant's MM-3 and ask you if you recognize what's depicted
3	in that exhibit?
4	A. Yes. It's a check to my company Bator Bintoer.
5	MR. RUBINSTEIN: We offer that in evidence.
6	MR. KWOK: No objection.
7	THE COURT: MM-3 is admitted in evidence.
8	(Defendant's Exhibit MM-3 received in evidence)
9	(Continued on next page)
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SOUTHERN DISTRICT REPORTERS, P.C.

25

8697KAR6 Mason - direct

- 1 BY MR. RUBINSTEIN:
- Q. What work was performed that generated that bill?
- 3 A. This is for the cabinet, for putting the cabinet in the
- 4 kitchen.
- 5 Q. And how much did you charge for the cabinet in the kitchen?
- 6 A. \$620.
- 7 MR. RUBINSTEIN: Let me publish it to the jury, your
- 8 Honor.
- 9 THE COURT: OK.
- 10 Q. Let me show you what's -- let me show you this check marked
- 11 MM-4. And that is a personal check from Dr. Karron?
- 12 A. Yeah, because the other checks say CASI on them.
- 13 Q. Let me show you what's been marked as MM-4 and ask you if
- 14 you can identify what's been marked for identification as MM-4.
- 15 A. Yeah, it's a check to Bator Bintoer from Computer Aided
- 16 Surgery for \$1766.66.
- 17 Q. And that was for work done inside the living room portion
- 18 that you testified to?
- 19 A. Yes.
- 20 THE COURT: Are you offering MM-4 into evidence?
- 21 MR. RUBINSTEIN: Yes, I'm offering MM-4 into evidence,
- 22 your Honor.
- THE COURT: Any objection?
- MR. KWOK: No objection.
- 25 THE COURT: MM-4 is admitted into evidence.

SOUTHERN DISTRICT REPORTERS, P.C.

8697KAR6 Mason - direct

1 (Defendant's Exhibit MM-4 received in evidence)

- 2 MR. RUBINSTEIN: I want to publish it to the jury.
- 3 THE COURT: I don't think anybody can read that.
- 4 MR. RUBINSTEIN: Should I walk it around to the jury?
- 5 While the jury is looking at that, I am going to show
- 6 you what's marked for identification as Defendant's MM-6.
- 7 THE COURT: What MM-5?
- 8 DEPUTY COURT CLERK: You're not using 5?
- 9 MR. RUBINSTEIN: That's not 5?
- 10 THE COURT: 5 hasn't been admitted into evidence. If
- it's 5, you have a problem.
- MR. RUBINSTEIN: There is no 5, Judge.
- 13 THE COURT: OK.
- 14 Q. All right. Take a look at what's been marked as
- 15 Defendant's MM-5. Do you recognize what's depicted?
- 16 A. Yes, it's one of my invoices.
- 17 THE COURT: This is 5 or 6?
- MR. RUBINSTEIN: 5.
- 19 THE COURT: What you are showing the witness is 5, not
- 20 6?
- MR. RUBINSTEIN: Yes, your Honor.
- 22 THE COURT: OK, it's now 5. Please go ahead.
- 23 A. Yeah, it's probably one of my first invoices. It's for the
- 24 purchase and install of exhaust system for the computer network
- hub. It's for \$2,000. It says 50 percent deposit required

8697KAR6 Mason - direct

- 1 before work commences.
- Q. And did you receive that money?
- 3 A. I'm sure I did, yes.
- 4 MR. RUBINSTEIN: We offer MM-5 into evidence.
- 5 MR. KWOK: No objection.
- 6 THE COURT: Was this paid, or \$1,000 paid?
- 7 THE WITNESS: This must have been before I started the
- 8 work. I usually get 50 percent deposit, or when it's done or
- 9 different stages I get the rest of the money.
- 10 THE COURT: You did get paid on this.
- 11 THE WITNESS: Yes. I mean like in my books.
- 12 THE COURT: MM-5 admitted into evidence.
- 13 (Defendant's Exhibit MM-5 received in evidence)
- 14 Q. Let me show you what's marked for identification as MM-6
- 15 and MM-7 and ask you if you can identify what's depicted in
- 16 those two items, sir.
- 17 A. OK. MM-6 is a time sheet for 21 hours, I think, and then
- 18 the other one is another time sheet that I must have filled out
- 19 for Dr. Karron.
- Q. And those are the time sheets you filled out?
- 21 A. Yeah.
- 22 Q. And how often do you fill out a time sheet for Dr. Karron?
- 23 A. Every week that I was working there.
- Q. And how often would you get paid?
- 25 A. I can't remember exactly, but I mean I think like I got SOUTHERN DISTRICT REPORTERS, P.C.

8697KAR6 Mason - direct

1 paid -- I got paid as like work was completed or work was due,

- 2 you know. He gave me the money at the beginning, and I might
- 3 have got paid like sometimes at the end of the week too. But
- 4 it was a little confusing because with the time sheets it's
- 5 kind of like I'm an employee but I wasn't really an employee,
- 6 it's my own business. But, as I said, he wanted me to do the
- 7 time sheet, so I did the time sheets, but I also built in for
- 8 the work I had done. So I mainly went off my bills for him.
- 9 THE COURT: Where did you get the time sheet?
- 10 THE WITNESS: Dr. Karron provided them. I don't
- 11 usually do time sheets for anybody else. Usually I write my
- 12 invoice and then, you know, if it gets changed, I get payments
- as the work gets done. That's normal procedure.
- 14 Q. Now, the time sheets, we offer them in evidence, your
- 15 Honor, the time sheets.
- MR. KWOK: Can I just take a look?
- 17 THE COURT: MM-6 and MM-7.
- 18 MR. KWOK: No objection.
- 19 THE COURT: No objection, MM-6 and MM-7 admitted into
- 20 evidence.
- 21 (Defendant's Exhibit MM-6 and MM-7 received in
- 22 evidence)
- 23 Q. Do those time sheets also indicate the type of work that
- 24 you did?
- 25 A. Yeah, roughly like they say some things.

8697KAR6 Mason - direct

1 Q. Tell us what number you are looking at.

- 2 A. Either one. It says --
- 3 O. Could you see the number on the little sticker?
- 4 A. Yeah. MM-6, this has to do with time that I spent on it
- 5 says hot air duct dump, but I know that means the ventilation
- 6 system for the computers.
- 7 Q. And how much time did you spend on that?
- 8 A. I spent quite a lot. This one says 21 hours, but I think I
- 9 spent more than that. It was quite a complicated little thing,
- 10 and as I said we had to work out the bugs. As I said, usually
- 11 how it works is he tell me what to do, I do it, then he tells
- 12 me what he didn't like about it, and then I would have to fix
- whatever he didn't like about it.
- 14 Q. Were you working alone or with other people?
- 15 A. Well, I worked alone for my company, but like when we
- 16 did -- when I worked on the computer racks and stuff, he had
- 17 some, I think they were like students, but he often had like
- 18 people come in, helping computer guys helping him with the
- 19 computer stuff, like students or something.
- 20 Like when we did the racks, like I had somebody help
- 21 me as I'm not particularly that knowledgeable on the computer
- 22 side. You know, my side was more like building the racks and
- 23 making everything, so he had someone else there who was like
- 24 hooking up the computers to see if they worked, and like
- 25 running all the wires, and I would like trip up the wires or SOUTHERN DISTRICT REPORTERS, P.C.

8697KAR6 Mason - direct

1 stuff. But like I didn't know how to hook up the computers or

- 2 anything. He had somebody else doing that stuff.
- There were always a couple of people. Matt was always
- 4 there working, and there were a couple of other people usually
- 5 working on the computers. And then like he would have like
- 6 student guys like there, and they would either be working on
- 7 stuff for the computer for him, or sometimes they would like
- 8 help me and stuff.
- 9 Q. Did you pay them, the ones that helped you?
- 10 A. Sorry?
- 11 Q. Did you pay them?
- 12 A. No, I didn't pay them.
- 13 Q. I am going to show you what's marked as -- do you recall
- 14 whether or not the checks -- the color of the checks you
- 15 received?
- 16 A. Were the same? You mean like his check and the other
- 17 check?
- 18 Q. Correct.
- 19 A. No, I think they were different. I mean I can't remember.
- 20 I think the Computer Aided Surgery ones were all pink. It was
- 21 a little while ago, and I think --
- 22 Q. Let me show you what's MM-8 for identification. Do you
- 23 recognize what's contained there?
- 24 A. Yeah, it's a check from Computer Aided Surgery to Bator
- 25 Bintoer for \$1,082.

8697KAR6 Mason - direct

- 1 THE COURT: 8 hasn't been admitted in evidence.
- 2 MR. RUBINSTEIN: No, I'm offering it in evidence.
- 3 MR. KWOK: No objection.
- 4 THE COURT: All right. 8 is in evidence.
- 5 (Defendant's Exhibit MM-8 received in evidence)
- 6 Q. Now you can discuss it.
- 7 A. Yeah, it's a check written to my company from Computer
- 8 Aided Surgery for \$1,082.67.
- 9 Q. I show you what's Exhibit MM-9 and ask you if you could --
- 10 if you recognize what is contained in that exhibit.
- 11 A. Yeah, MM-9 is another check to Bator Bintoer but this one
- is from Dr. Karron for \$200.
- 13 O. Do you know what you did for that \$200?
- 14 A. Probably that was still something to do with doing the
- 15 cabinet in the kitchen. You know, that maybe that came later
- 16 because I had to hook up his water filtration system.
- 17 THE COURT: You had to do what?
- 18 THE WITNESS: It was like in the cabinet. He had like
- 19 a water filtration system, and when I put it back I think I had
- 20 to charge extra because it was quite complicated to put it
- 21 back.
- 22 Q. Now, do you recall when you finished doing work for Dr.
- 23 Karron?
- 24 A. I'm not the greatest at dates, but as I said I think the
- 25 whole thing went on a couple of months.

8697KAR6 Mason - direct

1 Q. And when you finished your job, were you owed money?

- 2 A. I probably was owed a little bit of money. I can't
- 3 remember exactly, but usually, you know, it always takes a
- 4 little time to get paid. I never got paid from anybody
- 5 straight away, but Dr. Karron was pretty good. I mean I got --
- 6 THE COURT: Let's just answer yes or no if you can.
- 7 THE WITNESS: OK, sorry.
- 8 A. In my books I'm fully paid by Dr. Karron. He never really
- 9 owed me any money over a long period of time or anything.
- 10 Q. There are checks and invoices for any work you did for Dr.
- 11 Karron, is that correct?
- 12 A. Yes.
- 13 Q. OK. I am going to show you -- this is the last one I'm
- 14 going to show you. It's Defendant's NN-1 and NN-2. Sorry.
- 15 There are three exhibits. There is NN, NN-1 and NN-2. I show
- 16 you these exhibits and ask you if you recognize these three
- 17 exhibits, sir.
- 18 A. Yeah, it's a check made to Bator Bintoer for --
- 19 Q. Don't discuss it. It's not in evidence yet.
- 20 THE COURT: Do you remember each of these checks?
- 21 Q. Do you recognize it?
- 22 A. Yeah, I think so. I don't know. This one is from CASI LLC
- 23 which mainly I remember them being CASI. But maybe this was
- one of the first ones. I'm not sure. But, yeah, it's a check
- 25 made to me.

8697KAR6 Mason - direct

1 Q. Take a look at NN-1. Do you recognize what that is?

- 2 A. Yeah, it's one of my invoices.
- 3 Q. Take a look at NN-2.
- 4 A. OK. Yeah, this is another one of my invoices.
- 5 Q. And we offer NN, NN-1 and NN-2 into evidence.
- 6 MR. KWOK: No objection.
- 7 THE COURT: No objection. Received.
- 8 (Defendant's Exhibits NN, NN-1 and NN-2 received in
- 9 evidence)
- 10 Q. Now, those three exhibits, the NN exhibits, do they relate
- 11 to one particular episode, in other words, the work, the check
- 12 and what have you?
- 13 A. Yes. I would say these all relate to working on the
- 14 exhaust system, because I can see the machine shop for the
- 15 handles, which I remember happening.
- 16 Q. Now, does it show the date the work was done on your
- 17 invoice?
- 18 A. Yes.
- 19 Q. What date was the work -- tell us what exhibit you are
- 20 looking at.
- 21 A. I am looking at NN-2.
- 22 THE COURT: As in Nancy.
- 23 MR. RUBINSTEIN: Named for my wife. We had an
- 24 anniversary last week.
- 25 A. Yeah, to 6/20, 6/27 and 7/04 the week after that.

8697KAR6 Mason - direct

- 1 Q. What year?
- 2 A. '03.
- 3 Q. What were you paid?
- 4 A. 8 17 03.
- 5 Q. And how much were you paid?
- 6 A. 2,600.
- 7 MR. RUBINSTEIN: I have no other questions.
- 8 CROSS EXAMINATION
- 9 BY MR. KWOK:
- 10 Q. Good afternoon, Mr. Mason.
- 11 A. Good afternoon.
- 12 Q. You said you got paid for your work?
- 13 A. I did.
- 14 Q. You also testified a moment ago you got checks both from
- 15 Dr. Karron personally and from CASI, is that right?
- 16 A. That's correct.
- 17 Q. With respect to the CASI checks, you didn't know where that
- money came from, did you?
- 19 A. No. I mean what do you mean do I know where that money
- 20 came from?
- 21 Q. All you knew is it came from CASI. You don't know where it
- 22 came from earlier.
- 23 A. No.
- Q. Would you bring your own tools when you went to Dr.
- 25 Karron's place?

8697KAR6 Mason - cross

- 1 A. Absolutely.
- Q. Did you go to a hardware store to buy additional items that
- 3 you needed?
- 4 A. I did.
- 5 Q. Did you go to a place called Homefront Hardware Store?
- 6 A. Often.
- 7 Q. Did you go to that store for this project?
- 8 A. I did, yes.
- 9 Q. Did you go there on or about June 16, 2003?
- 10 A. Quite possibly.
- 11 Q. Do you remember buying something called Combat Roach Gel
- 12 Bait at that hardware?
- 13 A. Combat Roach Gel Bait? Is that like roach, antiroach
- 14 things?
- 15 Q. Could I show you something that would refresh your
- 16 recollection?
- 17 A. Yeah.
- 18 Q. I am showing him, your Honor, Government Exhibit 101, page
- 19 20 of 21.
- 20 A. It says my name.
- 21 Q. Does that refresh your recollection why you bought Combat
- 22 Roach Gel Baits on June 16, 2003?
- 23 A. I would imagine I put them in the kitchen cabinet because
- there were probably roaches.
- 25 Q. For this project, for the defendant?

8697KAR6 Mason - cross

- 1 A. Yeah.
- Q. Do you know how that was paid for, the items that you
- 3 bought from the hardware store?
- 4 A. I presume -- let me think. How was that paid for?
- 5 Sometimes I had to pay for it myself, depending -- it was
- 6 always a little awkward. He had an account there, but he
- 7 didn't always pay up with his account, so sometimes I went
- 8 there and they wouldn't let me put stuff on the account, so
- 9 then I would just have to pay cash, which if it was a little
- 10 amount I would do. Other than that, like mostly like if the
- 11 account was open I could put it on the account.
- 12 Q. For the items that you put on the account, as you said, do
- 13 you know how those eventually got paid for?
- 14 A. No.
- 15 Q. You don't know what money went to pay for those items?
- 16 A. No.
- 17 Q. Are you familiar with a program called Advanced Technology
- 18 Program, Mr. Mason?
- 19 A. Sorry?
- 20 Q. The Advanced Technology Program, ATP?
- 21 A. No.
- 22 Q. Did you at any time have any knowledge about the internal
- 23 financial situation of the defendant's company, CASI?
- 24 A. No.
- MR. KWOK: No further questions for this witness.

SOUTHERN DISTRICT REPORTERS, P.C.

8697KAR6 Mason - cross

1 THE COURT: Mr. Rubinstein? Any redirect?

- 2 MR. RUBINSTEIN: Just one second, your Honor.
- 3 REDIRECT EXAMINATION
- 4 BY MR. RUBINSTEIN:
- 5 Q. How much was spent on the Combat Roach purchase at the home
- 6 front hardware?
- 7 A. Well, I don't know exactly, but they're not very expensive,
- 8 a few dollars. I mean it's roach traps.
- 9 Q. And do you have the invoice in front of you there?
- 10 A. I don't. I think they took it back.
- 11 THE COURT: It's just shown to him to refresh his
- 12 recollection?
- 13 MR. KWOK: That's right.
- 14 THE COURT: It doesn't have an exhibit number. It
- 15 should be marked actually. You should mark it as an exhibit.
- 16 A. It says 9.99.
- 17 Q. Is that \$999?
- 18 A. No, \$9.99.
- 19 Q. Thank you.
- 20 A. It's roach things, you know.
- MR. RUBINSTEIN: No further questions, your Honor.
- 22 THE COURT: All right. All done with this witness?
- 23 You are excused. I'm going to excuse the jury first until 9:30
- 24 tomorrow morning. I hope it's not too hot out there. Maybe
- 25 you want to stay.

8697KAR6 Mason	. –	redirect
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1	Jury	not	present)	١
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- 2 THE COURT: All right. You may step down.
- 3 (Witness excused)
- 4 THE COURT: What do we have for witnesses tomorrow?
- 5 MR. RUBINSTEIN: Well, we sent the insurance man home,
- 6 and we sent Ms. LeClerc, told her she is not testifying, so we
- 7 have tomorrow character witnesses, Mr. Cox and potentially the
- 8 defendant. I think we should be finished tomorrow, Judge.
- 9 THE COURT: Oh, really? OK. And the rebuttal? Are
- 10 you going to have any rebuttal, do you think?
- 11 MR. EVERDELL: At this point, your Honor, I don't
- 12 think we contemplate anything.
- 13 THE COURT: Should we have a charging conference
- 14 tomorrow night?
- MR. RUBINSTEIN: Yes, your Honor.
- MR. KWOK: Yes.
- MR. EVERDELL: Yes.
- 18 THE COURT: OK. Thank you very much then. Nothing
- 19 else to take up.
- MR. RUBINSTEIN: No, your Honor.
- MR. KWOK: No, your Honor.
- 22 (Trial adjourned to June 10, 2008 at 9:15 a.m.)

23

24

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(212) 805-0300

	86A7KAR1	
1	UNITED STATES DISTRICT COURT	
1	SOUTHERN DISTRICT OF NEW YORK	
2	x	
2		
3	UNITED STATES OF AMERICA,	New York, N.Y.
3		
4	v.	S2 07 CR 541 (RPP)
4		
5	DANIEL B. KARRON,	
5		
6	Defendant.	
6		
7	x	
7		
8		
8		June 10, 2008
9		9:30 a.m.
9		
10		
10	Before:	
11		
11	HON. ROBERT P. PATTERS	ON, JR.,
12		
12		District Judge
13		
13		

APPEARANCES

15	MICHA	AEL J. GARCIA
15		United States Attorney for the
16		Southern District of New York
16	BY:	STEVEN KWOK
17		CHRISTIAN EVERDELL
17		Assistant United States Attorneys
18		
18	RUBI	NSTEIN & COROZZO, LLP
19		Attorneys for Defendant
19	BY:	RONALD RUBINSTEIN
20		
20	Also	Present: Rachel Ondrik, U.S. Dept. of Commerce
21		Kirk Yamatani, U.S. Dept. of Commerce
22		
23		
24		
25		
		SOUTHERN DISTRICT REPORTERS, P.C.

86A7KAR1

- 1 (Trial resumed; jury not present)
- 2 MR. RUBINSTEIN: I do have an objection to your
- 3 Honor's suggestion yesterday as to your proposed charge.
- 4 THE COURT: I will have the proposed charge for you in
- 5 ten minutes. I don't know what I suggested yesterday.
- 6 MR. RUBINSTEIN: Yesterday you said in substance the
- 7 way you read the statute the "without authority" phrase applies
- 8 to both the misapplication of funds as well as the conversion
- 9 of funds.
- 10 THE COURT: I thought the government was going to
- 11 object to that, not you.
- MR. RUBINSTEIN: Well, I think your Honor is actually
- amending the indictment, because the government opened and
- 14 their theory is misapplying government grant funds, and that
- 15 should be the basis of the charge, and not to include any other
- 16 language that might broaden that concept. And I cite --
- 17 THE COURT: That's the whole point of the "without
- 18 authority". After all, he could give himself authority to do
- 19 anything with CASI's funds. That's the whole point.
- 20 MR. RUBINSTEIN: It's not directly on point, your
- 21 Honor, but it does raise the issue from the Second Circuit,
- 22 U.S. v. Zvi.
- 23 THE COURT: Well, let me see it. Let me see the case.
- I don't know this case. U.S. v. what?
- MR. RUBINSTEIN: Zvi. I have a copy without the first SOUTHERN DISTRICT REPORTERS, P.C.

86A7KAR1

- 1 page. I will give you the first page, Judge. Here is a copy
- 2 of the --
- 3 THE COURT: What year was this?
- 4 MR. RUBINSTEIN: 1999, Judge Walker.
- 5 THE COURT: It was not cited to me. We will have the
- 6 charging conference. I will take it into account then.
- 7 MR. RUBINSTEIN: But I think, Judge, off the record --
- 8 THE COURT: Oh, I see. Zvi. This is filing false
- 9 income tax returns.
- 10 MR. RUBINSTEIN: I know, but there is language about
- 11 constructive amending of the indictment.
- 12 THE COURT: Oh, the indictment isn't amended; the
- 13 indictment is right there. You look at the indictment. I
- 14 looked at it over the weekend. It's got the words of the
- 15 statute right in it, and it quotes the words of the statute.
- 16 We will take it up in the charging conference.
- MR. RUBINSTEIN: Also, judge there is a case of U.S.
- 18 v. Millstein that I will give to the court.
- 19 THE COURT: Millstein Brothers? The former real
- 20 estate magnates?
- 21 MR. RUBINSTEIN: I don't know about that, Judge.
- 22 THE COURT: You must have heard of Millstein.
- 23 MR. RUBINSTEIN: Of course I've heard of Millstein.
- 24 THE COURT: I don't think that was this type of case,
- but I will look at any case you've got.

86A7KAR1

1		MR. RUBINSTEIN: Thank you, Judge. I will hand up
2	the	
3		THE COURT: How are we doing on the jury, Robert?
4		DEPUTY COURT CLERK: I think we're good.
5		MR. RUBINSTEIN: Judge, we're not good.
6		DEPUTY COURT CLERK: We have the 14.
7		THE COURT: Where is your client? Call the client.
8		MR. RUBINSTEIN: Yes, your Honor.
9		THE COURT: He's asleep again?
10		OK. Here he is.
11		(Continued on next page)
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SOUTHERN DISTRICT REPORTERS, P.C.

86A7KAR1

- 1 (Jury present)
- 2 THE COURT: Good morning. Please be seated. Ladies
- 3 and gentlemen, Ms. Brown called in, and her knee was swollen up
- 4 so she was unable to walk, so I gather she is all right but
- 5 it's something that she has to take care of. Accordingly, I
- 6 will ask Mr. Bracero to take Ms. Brown's seat as Juror 12.
- 7 I don't think there is anything else to say before we
- 8 start the morning. So, Mr. Rubinstein, your next witness.
- 9 MR. RUBINSTEIN: Yes. Defense calls Dr. Edgar Coons.
- 10 EDGAR E. COONS,
- 11 called as a witness by the defendant,
- having been duly sworn, testified as follows:
- 13 DEPUTY COURT CLERK: Please state your name and spell
- 14 your last name slowly.
- 15 THE WITNESS: My name is Edgar E. Coons. My last name
- is spelled C-O-O-N-S. And I am informally known as Ted. I'm a
- 17 professor at NYU.
- 18 DIRECT EXAMINATION
- 19 BY MR. RUBINSTEIN:
- 20 Q. Good morning, Dr. Coons. You say that you are a professor
- 21 at NYU. How long have you been affiliated with New York
- 22 University, sir?
- 23 A. Since February 1965.
- Q. And is that continuous?
- 25 A. Yes.

86A7KAR1 Coons - direct

- 1 Q. And what is your academic background, sir?
- 2 A. Well, as an undergraduate I graduated from Colorado
- 3 College. I got my Ph.D. at Yale in physiological psychology.
- 4 Q. And what year was that that you received your Ph.D.?
- 5 A. 1964.
- 6 Q. And are you a full professor at NYU?
- 7 A. I am a full professor, yes.
- 8 Q. And what department are you in?
- 9 A. I'm in psychology, and I have a joint appointment in the
- 10 Department of Psychology and Center for Neuroscience.
- 11 Q. What is neuroscience, sir?
- 12 A. Well, it's the study of the nervous system, primarily the
- brain and in my view its relationship to behavior.
- 14 Q. And do you know Dr. Karron?
- 15 A. I do indeed.
- 16 Q. Do you see him in the courtroom?
- 17 A. I do.
- 18 Q. And how long do you know Dr. Karron?
- 19 A. Well, I have known him since at least 1975.
- 20 Q. And how did you come to know him?
- 21 A. He was an undergraduate who took some courses with me to
- 22 begin with, and very bright, and I adopted him into my
- laboratory as a research assistant.
- Q. Researching what, sir?
- A. Well, we were looking at the relationship between some SOUTHERN DISTRICT REPORTERS, P.C.

86A7KAR1 Coons - direct

- 1 appetite suppressants and their addictiveness. What we found
- 2 was that they certainly suppressed appetite but were not
- 3 addictive.
- 4 Q. And did you continue your relationship with Dr. Karron?
- 5 A. Well, I've known him ever since. And of course he went on
- 6 and got his own degree, eventually a Ph.D. in applied science
- 7 at NYU. Beyond that, I know him casually, quite frequently, I
- 8 would say several times a year.
- 9 Q. And did you have any involvement with Dr. Karron in his
- 10 quest for a Ph.D.?
- 11 A. Well, I was on his readers committee.
- 12 Q. What is a readers committee?
- 13 A. Well, when you do a Ph.D. you have a committee, we call an
- 14 advisors committee, which gives you advice all during the
- 15 course of your research. When you finally have concluded it
- 16 and written it up and are standing for orals, they call in a
- 17 few other people that have not been directly involved in that
- 18 research, to read the thesis and to help examine the candidate
- 19 in an oral examination over the thesis. And so I was one of
- those people.
- 21 Q. And are you familiar with any of the projects that Dr.
- 22 Karron has worked on?
- 23 A. Well, sort of, kind of between vaguely and yes.
- Q. And do you know him on a social level?
- 25 A. We're friends. Yes, I would say so.

86A7KAR1 Coons - direct

- 1 Q. And do you have an opinion as to his honesty and
- 2 truthfulness?
- 3 A. I absolutely consider him to be a very fair and honest man.
- 4 Q. Have you ever had occasion to have financial dealings with
- 5 Dr. Karron?
- 6 A. Yes. I would say back in the mid-'90s he had some problem
- 7 meeting payroll deadline and --
- 8 MR. EVERDELL: Objection.
- 9 THE COURT: Objection sustained. It doesn't require
- 10 an explanation, the question. It went beyond the question.
- 11 A. I loaned him \$10,000.
- 12 Q. And was that ever repaid?
- 13 A. Yes.
- 14 Q. Was there any question in your mind that it would be
- 15 repaid?
- 16 A. No problem.
- MR. RUBINSTEIN: No further questions.
- 18 THE COURT: Cross-examination.
- 19 CROSS EXAMINATION
- 20 BY MR. EVERDELL:
- Q. Good morning, Dr. Coons.
- 22 A. Hello.
- 23 Q. You testified that you first got to know the defendant I
- 24 believe when he was a student of yours.
- 25 A. That's correct.

86a7kar1 Coons - cross

- 1 Q. And that he was in your research laboratory?
- 2 A. That's correct.
- 3 Q. About how long ago was that contact with the defendant?
- 4 A. Well, that would be about 1970, I would say about 1977,
- 5 '78, '79, in that period.
- 6 Q. So, 30 years ago.
- 7 A. 30 years ago, yes.
- 8 Q. And since then you have had casual contact with the
- 9 defendant?
- 10 A. Casual except in the sense that we just said, that I had to
- 11 read his thesis.
- 12 Q. Right. So casual meaning a couple times a year?
- 13 A. More than that probably.
- 14 Q. Well, Dr. Coons, are you familiar with something called the
- 15 Advanced Technology grant or ATP grant?
- 16 A. I don't think I am. I don't know it by that name if I do.
- 17 Q. Well, you are not familiar, are you, with the rules that
- 18 govern the ATP grant, are you?
- 19 A. No.
- 20 Q. And you never worked at the defendant's company CASI, did
- 21 you?
- 22 A. No.
- 23 Q. And you never handled the finances for CASI, right?
- 24 A. No.
- Q. So, you don't have any knowledge of what happened at CASI SOUTHERN DISTRICT REPORTERS, P.C.

86a7kar1 Coons - cross

- 1 between 2000 and 2003, do you?
- 2 A. I have no knowledge.
- 3 O. Dr. Coons, you also said that the defendant is a friend of
- 4 yours, right?
- 5 A. Yes, I would say so.
- 6 Q. And you wouldn't want anything bad to happen to your
- 7 friend, right?
- 8 A. I would not want to have anything bad happen to my friend.
- 9 MR. EVERDELL: All right. No further questions, your
- 10 Honor.
- MR. RUBINSTEIN: No questions, your Honor.
- 12 THE COURT: All right. Mr. Coons, you may step down.
- 13 (Witness excused)
- 14 THE COURT: Next witness.
- 15 MR. RUBINSTEIN: He will be right in, your Honor.
- 16 THEODORE W. LESLIE,
- 17 called as a witness by the defendant,
- 18 having been duly sworn, testified as follows:
- 19 DEPUTY COURT CLERK: Please state your name and spell
- your last name slowly for the record, please.
- THE WITNESS: Theodore W. Leslie, L-E-S-L-I-E.
- 22 DIRECT EXAMINATION
- 23 BY MR. RUBINSTEIN:
- Q. Good morning, Mr. Leslie.
- 25 A. Good morning, sir.

- 1 Q. What is your business or occupation?
- 2 A. I am retired.
- 3 O. And how long have you been retired?
- 4 A. Since 1990.
- 5 Q. And what did you do before you retired?
- 6 A. I programmed.
- 7 Q. What's your educational background, sir?
- 8 A. I have two degrees, one in musicology and the other in
- 9 mathematics.
- 10 Q. And when you graduated from college what did you do?
- 11 A. It's actually somewhat complicated. When I finished, I
- 12 went into the Army for two years. Then I went back and
- 13 completed. I had to play a senior recital. I did that, and I
- 14 got the degree. Then I studied graduate work and musicology
- 15 for a while.
- 16 Then I worked for the Social Security Administration
- for a while, and the IRS for a while. Then I returned to
- 18 school, got the degree in mathematics. Then on the spur of the
- 19 moment I went to work for IBM where I remained for 24 years and
- 20 seven months.
- 21 Q. And at IBM in what capacity did you work?
- 22 A. Mostly programming, some managing.
- 23 Q. Did you have a background in programming when you went to
- 24 work for IBM?
- 25 A. No. At that time IBM taught programming.

- 1 Q. To their employees?
- 2 A. Yes, to people who came on as would-be programmers.
- 3 THE COURT: What years are we talking about?
- 4 THE WITNESS: '65.
- 5 Q. From 1965 to 1990?
- 6 A. That's right.
- 7 Q. And you retired in 1990?
- 8 A. That's correct.
- 9 Q. And have you had any gainful employment since 1990?
- 10 A. I have occupied myself with the study of molecular and cell
- 11 biology.
- 12 Q. Now at IBM as an employee do you have a pension plan?
- 13 A. Yes.
- 14 Q. Do you have stock in IBM?
- 15 A. Yes.
- 16 Q. As an employee?
- 17 A. Yes. I haven't started to starve yet.
- 18 Q. How many more centuries could you survive on your pension
- 19 from IBM?
- 20 A. One never knows.
- Q. Now, did there come a time that you met Dr. Karron?
- 22 A. Yeah.
- Q. How -- did you see him in court?
- 24 A. Yes, of course.
- 25 Q. Indicating the defendant, your Honor.

SOUTHERN DISTRICT REPORTERS, P.C.

1 THE COURT: Yes. The witness has identified the

- 2 defendant.
- 3 MR. RUBINSTEIN: Thank you.
- 4 Q. And how did you come to meet Dr. Karron?
- 5 A. I audit courses, and so --
- 6 O. Explain to the jury what auditing courses means.
- 7 A. You take a course, and you do everything that's required,
- 8 and you don't get credit for it. And you can do this if you
- 9 are retired. So, there was a course that appeared to be
- interesting to me. And it was probably -- though I can't tell
- 11 you specifically -- it was probably computers and biology.
- 12 Q. And where was it?
- 13 A. At CCNY. And I sat in on the course.
- 14 Q. And who taught the course?
- 15 A. Dr. Karron.
- 16 Q. Approximately how many students were there?
- 17 A. Perhaps 30.
- 18 Q. And did you have occasion while you were in that course to
- 19 develop a relationship with Dr. Karron?
- 20 A. I think we must have talked a little bit, but after that I
- 21 think with some other members of the faculty we would have
- 22 coffee either before or after, and I got to know him somehow or
- the other.
- 24 THE COURT: Can we have a date, Mr. Rubinstein?
- 25 Q. Approximately when would you say that you first met Dr.

- 1 Karron?
- 2 A. 2002, maybe something like that. Not a long time but not
- 3 an insignificant time.
- 4 Q. Now, since that time that you met him in 2002 have you had
- 5 contact with him?
- 6 A. Yes. I would say we get together maybe once a month or so.
- 7 Q. And have you formed an opinion as to his honesty and
- 8 truthfulness?
- 9 A. I cannot imagine anybody more honest or more
- 10 straightforward.
- 11 THE COURT: Cross-examination.
- MR. KWOK: Thank you, your Honor.
- 13 CROSS EXAMINATION
- 14 BY MR. KWOK:
- 15 Q. Good morning.
- 16 A. Good morning.
- 17 Q. You just mentioned a moment ago that you retired in 1990,
- 18 is that right?
- 19 A. Yes.
- 20 Q. So that means you haven't been working since that time.
- 21 A. You mean I haven't been earning money since that time.
- 22 Q. That's right.
- 23 A. That's correct.
- Q. So you never worked in the defendant's company around the
- 25 time --

86A7KAR1 Leslie - cross

- 1 A. No, no, no.
- 2 O. -- 2000 to 2003?
- 3 A. No, I never worked for him at all.
- 4 Q. You know nothing about the defendant's company CASI?
- 5 A. No.
- 6 Q. And you have no knowledge about how CASI got its money,
- 7 right?
- 8 A. No.
- 9 Q. Similarly, you have no idea how CASI spent its money.
- 10 A. No.
- 11 Q. Are you familiar with a program called Advanced Technology
- 12 Program grant?
- 13 A. Yesterday by mistake I sat in, so there is some hazy
- 14 knowledge of this, but to say that I understand it, no.
- 15 Q. Aside from yesterday?
- 16 A. Oh, no, not at all.
- MR. KWOK: No further questions.
- 18 MR. RUBINSTEIN: No questions, your Honor.
- 19 THE COURT: Nothing further?
- 20 MR. RUBINSTEIN: No. Could I step out and see if my
- 21 next witness is here?
- THE COURT: The witness is excused.
- 23 (Witness excused)
- 24
- 25 MICHAEL R. TREAT,

86A7KAR1 Leslie - cross

- called as a witness by the defendant,
- 2 having been duly sworn, testified as follows:
- 3 DEPUTY COURT CLERK: Please state your name for the
- 4 record and spell your last name slowly.
- 5 THE WITNESS: My name is Michael R. Treat, T-R-E-A-T.
- 6 DIRECT EXAMINATION
- 7 BY MR. RUBINSTEIN:
- 8 Q. Good morning, Dr. Treat.
- 9 A. Good morning.
- 10 Q. Now, what is your business or profession, sir?
- 11 A. I'm a general surgeon. I have been a general surgeon for
- 12 many years, although I'm not practicing surgery currently. I
- 13 also have a company that's producing a robotic surgical device.
- 14 Q. And how long have you had that company?
- 15 A. The company was founded in 2002, I think March of 2002.
- 16 Q. And have you -- well, withdrawn.
- 17 Do you teach?
- 18 A. Well, I taught on a regular basis when I was practicing
- 19 general surgery. I worked at Columbia University for that
- 20 time.
- 21 Q. And how long did you teach at Columbia University?
- 22 A. Well, I guess I got my 25 year pin just last week, so I
- 23 guess I have been there around 25 years as faculty basically.
- 24 THE COURT: College of Physicians and Surgeons?
- THE WITNESS: Yes, sir.

86A7KAR1 Treat - direct

- 1 THE COURT: Up at Columbia Presbyterian?
- 2 THE WITNESS: Yes. It used to be called Columbia
- 3 Presbyterian; now it's New York Presbyterian, but it's the
- 4 hospital affiliated with Columbia University.
- 5 Q. And the name of your company is Robotic Systems and
- 6 Technology, Inc.?
- 7 A. Yeah, the company is called Robotic Systems and
- 8 Technologies, but it used to be called robotic Surgical Tech.
- 9 Q. And what has it developed?
- 10 A. We're working on a robotic assistant for surgery, something
- 11 that hands the surgeon instruments and then counts the
- 12 instruments and keeps track of them so they don't get misplaced
- 13 or lost.
- 14 Q. And have you received any grants or contracts from the
- 15 federal government?
- 16 A. Yes, we have received several grants from different parts
- of the federal government.
- 18 Q. Now, do you know Dr. Karron?
- 19 A. Yes, I do.
- 20 Q. Do you see him in court?
- 21 A. Yes, he is.
- 22 Q. Can you point him out, please, just for the record.
- 23 A. I really don't have my glasses on, but I think he is the
- 24 fellow sitting right over there. Yes.
- 25 THE COURT: The record will indicate that the witness SOUTHERN DISTRICT REPORTERS, P.C.

86A7KAR1 Treat - direct

- 1 has identified the defendant.
- THE WITNESS: Yes, I do see him over there.
- 3 Q. By the way, I see you are walking with a cane.
- 4 A. Yes, yes.
- 5 Q. Do you have a permanent disability?
- 6 A. Yes, I was injured in an accident, actually a motorcycle
- 7 accident, about three years ago. It was a pretty serious
- 8 accident.
- 9 Q. You were on the motorcycle?
- 10 A. Yes, I was.
- 11 Q. Now, how do you know Dr. Karron?
- 12 A. Well, I think I met him at a meeting, like one of those
- 13 scientific meetings. I think it might have been in California.
- 14 It was a meeting called Medicine Meets Virtual Reality. It's a
- 15 yearly thing. I think I ran into him there. This is quite a
- 16 few years ago, maybe 2003 or thereabouts, but I don't recall
- 17 where I first met him, but it would have been at one of those
- 18 meeting kinds of things.
- 19 Q. Did you ever have occasion to work on the same faculty as
- 20 he did?
- 21 A. No, we have never been on actually the same project or same
- 22 faculty or anything like that.
- 23 Q. And so what year would you say that you met Dr. Karron?
- 24 A. I'm estimating about 2003. It would have been early in our
- getting out there with our work, so that's when I was speaking SOUTHERN DISTRICT REPORTERS, P.C.

86A7KAR1 Treat - direct

- 1 and going to those meetings.
- 2 Q. And have you continued to have a relationship with Dr.
- 3 Karron since that time?
- 4 A. On and off, yeah. I mean I do see him at meetings and that
- 5 type of thing.
- 6 Q. And during that course of time were you able to form an
- 7 opinion as to his truthfulness and honesty?
- 8 A. Yes.
- 9 Q. And what is that opinion, sir?
- 10 A. I think he is a very honest person. I think he is a good
- 11 scientist. I mean that's as plain as I can put it. I think he
- is a decent person. I think he is a good scientist too.
- 13 MR. RUBINSTEIN: Thank you very much, sir.
- 14 THE COURT: Any cross-examination?
- MR. EVERDELL: Yes, your Honor.
- 16 CROSS EXAMINATION
- 17 BY MR. EVERDELL:
- 18 Q. Good morning, Dr. Treat.
- 19 A. Good morning.
- 20 Q. You testified that you have received grants before from
- 21 different parts of the federal government, is that right?
- 22 A. Yes.
- 23 Q. You never received an ATP grant, have you?
- A. No, no, I never got one of those.
- Q. So you're not familiar with the rules of the ATP grant?

86A7KAR1 Treat - cross

- 1 A. I really -- well, I looked into it a few years ago, but I
- 2 really can't say I know the rules very seriously, so basically,
- 3 no, I don't know the rules.
- 4 Q. And you never worked for the defendant, did you?
- 5 A. Dan Karron, no, never worked for him.
- 6 Q. So, you are not familiar with the company CASI?
- 7 A. No, I've heard of it, but I never worked for it basically.
- 8 Q. So you never worked at CASI?
- 9 A. No.
- 10 Q. And you never handled the finances at CASI?
- 11 A. Oh, no, no.
- 12 Q. And you are not aware of what happened in CASI between the
- 13 years 2001 and 2003, right?
- 14 A. Not really, no. I don't know any of the details of what's
- 15 going on.
- 16 Q. In fact you said you didn't even meet Dr. Karron until
- 17 2003, isn't that right?
- 18 A. In that time frame, yes.
- 19 Q. You also said that you met him at a conference, right?
- 20 A. Yes.
- 21 Q. And you have never been on the same project or faculty with
- 22 Dr. Karron, isn't that right?
- 23 A. Well, no, no.
- Q. And I think you said that you had an off-and-on
- relationship, you would see him at meetings, is that right?

86A7KAR1 Treat - cross

- 1 A. That's pretty much it, yes.
- Q. So, you see him maybe a couple times a year?
- 3 A. Yes, I think that's about right.
- 4 Q. Maybe four or five times a year?
- 5 A. Yeah, I think that's about right. It's not like a regular
- 6 monthly meeting or anything like that, but, yeah.
- 7 Q. So you don't regularly meet with the defendant, right?
- 8 A. No.
- 9 Q. So your opinion of him is based on these four to five
- 10 meetings you had with him four or five days a year?
- 11 A. Yes, it's just my general impression of him.
- MR. EVERDELL: Thank you. No further questions.
- THE COURT: Any redirect?
- MR. RUBINSTEIN: No, your Honor.
- THE COURT: Thank you very much, doctor.
- 16 (Witness excused)
- 17 MR. RUBINSTEIN: Your Honor, may I approach the bench,
- 18 please?
- 19 THE COURT: Yes, sir.
- 20 (Continued on next page)
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86A7KAR1

1	(At the sidebar)
2	MR. RUBINSTEIN: Your Honor, I have two short
3	witnesses. One is purportedly parking the car, apparently came
4	with Dr. Karron from what I understand and is parking the car;
5	the other one is coming from Princeton, New Jersey. I would
б	ask your Honor to give me a ten-minute recess. If we don't
7	have them in ten minutes, I will make my determination about
8	calling Dr. Karron.
9	MR. EVERDELL: Who are the witnesses?
10	THE COURT: Windy?
11	MR. RUBINSTEIN: Windy from Connecticut, and Lee
12	Goldberg who is a character witness.
13	THE COURT: OK. Shall I excuse the jury for ten
14	minutes?
15	MR. RUBINSTEIN: Yes, please, your Honor.
16	(Continued on next page)
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86A7KAR1

- 1 (In open court)
- 2 THE COURT: Ladies and gentlemen, I think the best
- 3 thing to do is take a ten-minute recess, and we will come back
- 4 in ten minutes. I believe there will be some witnesses at that
- 5 point.
- 6 (Jury not present)
- 7 THE COURT: Why don't you hand out the draft charge so
- 8 that the parties will have that.
- 9 MR. EVERDELL: Your Honor, may I raise one issue as
- 10 well, as long as the jury is out?
- 11 THE COURT: Of course.
- 12 MR. EVERDELL: It's my understanding from the defense
- 13 counsel that he was going to call possibly another character
- 14 witness. And I wanted to raise the issue -- which is why I
- 15 objected with the first character witness -- that it's my
- 16 understanding of the federal rules that character witnesses are
- 17 not allowed to raise specific instances of conduct. They are
- 18 allowed to testify to opinion and reputation, the defendant's
- 19 character, a pertinent trait of the defendant's character only,
- 20 and they are not allowed to raise specific instances of conduct
- 21 in their testimony. So I raise this ahead of time in case the
- 22 defendant is planning on doing this with the next character
- 23 witness. It's inappropriate under the federal rules, and we
- 24 will object.
- THE COURT: Mr. Rubinstein?

SOUTHERN DISTRICT REPORTERS, P.C.

86A7KAR1

- 1 MR. RUBINSTEIN: I think the government is correct,
- 2 your Honor. I will be so advised.
- 3 THE COURT: All right. What do we do then with
- 4 respect to Dr. Coons' testimony? Is that waived?
- 5 MR. EVERDELL: I won't press that issue, your Honor.
- 6 THE COURT: All right.
- 7 MR. RUBINSTEIN: Thank you very much, your Honor.
- 8 (Recess)
- 9 MR. EVERDELL: Your Honor, now that Mr. Rubinstein is
- 10 back, I do want to take up a matter with the court.
- 11 So, the two witness I understand that he wants to call
- 12 are Lee Goldberg as a character witness and then Windy
- 13 Farnsworth as a fact witness. Is that correct?
- MR. RUBINSTEIN: That is right. Windy Farnsworth.
- 15 MR. EVERDELL: Windy Farnsworth as a fact witness. As
- 16 to Windy Farnsworth, the government objects to that at this
- 17 point. This is the first notice we ever had that they were
- 18 going to call her as a fact witness.
- 19 You have materials for her that we would like to be
- 20 able to prepare for her cross on, so this is very late notice
- 21 for the government to be able to prepare for cross for her,
- 22 given this is the very first time we have even been aware of
- the defendant's intent to call her as a witness. So, we object
- 24 to her being called as a witness. If anything, we request some
- time to be able to prepare for her cross-examination.

86A7KAR1

- 1 MR. RUBINSTEIN: Well, A, they know about her, so
- obviously they have material about her. B, her name has been
- 3 mentioned --
- 4 THE COURT: I forgot what her role is.
- 5 MR. RUBINSTEIN: Her role is that she is the lady from
- 6 Connecticut that Dr. Karron was going to move in with. They
- 7 introduced e-mails that reference her, and so she is a person
- 8 that they brought into this trial, and she is very relevant
- 9 because she gave Dr. Karron the infamous shoe rack that they
- 10 claim he bought with government funds. And this only came to
- 11 my attention during the course of the trial because it's such
- 12 a -- to me it's such a de minimis matter.
- 13 THE COURT: She is going to testify about the shoe
- 14 rack?
- 15 MR. RUBINSTEIN: About the shoe rack and Connecticut.
- 16 MR. EVERDELL: There are materials that we have that
- we want to look through in order to properly cross-examine her,
- 18 and this is the first notice we have had that the defense
- 19 counsel was planning on calling her.
- THE COURT: Well, is she here?
- 21 MR. RUBINSTEIN: I understand that she is going
- 22 through security, or she was going through security.
- 23 THE COURT: I can't see that the testimony is
- 24 particularly important.
- MR. EVERDELL: Well, your Honor, the thing about

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86A7KAR1

- 1 Connecticut, if you recall the e-mail, was that this was at the
- 2 end of the day yesterday, there was testimony that the
- 3 defendant wrote to someone else and said he was going to move
- 4 to Connecticut and move to Windy's house and say that he still
- 5 had a cot in the 33rd Street apartment, and they were hoping
- 6 the ATP people would buy that. That was the substance of the
- 7 e-mail, so it does go to a point in our case that we want to
- 8 make about rent payments and things like that and the
- 9 defendant's knowledge of that.
- 10 THE COURT: December 2002.
- 11 MR. EVERDELL: That's right, that's when the e-mail
- 12 was.
- 13 THE COURT: Well, I guess you have a person who wants
- 14 to see you, Mr. Rubinstein, one of the character witnesses.
- 15 MR. RUBINSTEIN: I'm told they have arrived.
- 16 THE COURT: That was a year and a half into the grant.
- MR. EVERDELL: That's true, that's certainly a point
- 18 we would make as well. But we know there are materials that we
- 19 have that might be relevant for cross-examination, and we would
- 20 like the chance to at least review them, get some time to
- 21 review them so we are adequately prepared.
- 22 THE COURT: Well, maybe I can give you a short recess
- 23 but nothing long.
- MR. EVERDELL: Thank you, your Honor.
- MR. RUBINSTEIN: Could I go speak to the witness, your SOUTHERN DISTRICT REPORTERS, P.C.

86A7KAR1

Т	HOHOT?
2	THE COURT: Yes. Let's get the witnesses in. Have
3	you got a witness here?
4	MR. RUBINSTEIN: I understand, but it's a witness I
5	never talked to, Judge. I just need about three minutes.
6	THE COURT: Well, all right. We've got to bring the
7	jury back in. We can't keep them waiting.
8	MR. RUBINSTEIN: Right.
9	(Recess)
10	MR. RUBINSTEIN: We have both our witnesses, Judge.
11	THE COURT: All right. Do you have the witness here?
12	MR. RUBINSTEIN: Yes, your Honor.
13	THE COURT: All right. Mr. Rubinstein, do you have
14	your witness?
15	MR. RUBINSTEIN: Yes, your Honor.
16	THE COURT: All right. I'm calling in the jury.
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86A7KAR1

- 1 (Jury present)
- THE COURT: All right. Please be seated.
- 3 Mr. Rubinstein?
- 4 MR. RUBINSTEIN: We're ready to proceed, your Honor.
- 5 Thank you. We call our next witness.
- 6 LEE H. GOLDBERG,
- 7 called as a witness by the defendant,
- 8 having been duly sworn, testified as follows:
- 9 DEPUTY COURT CLERK: Please state your name for the
- 10 record and spell your last name slowly.
- 11 THE WITNESS: Lee H. Goldberg.
- 12 DIRECT EXAMINATION
- 13 BY MR. RUBINSTEIN:
- 14 Q. Good morning, Mr. Goldberg.
- 15 A. Good morning.
- THE COURT: G-O-L-D-B-E-R-G?
- 17 THE WITNESS: Yes, sir.
- 18 THE COURT: All right.
- 19 Q. Where do you reside, sir?
- 20 A. I live in Princeton, New Jersey. Do you need an address?
- 21 2002 Mayfair Avenue.
- 22 Q. How long have you resided there?
- 23 A. A little over ten years.
- Q. Is that where you came from this morning?
- 25 A. Yes, sir, and that's why I'm late. I apologize to the

SOUTHERN DISTRICT REPORTERS, P.C.

86A7KAR1

Goldberg - direct

- 1 court. The trains, I don't want to talk about it.
- Q. Now, what is your business or occupation, sir?
- 3 A. I'm a recovering engineer. I used to be an aerospace
- 4 engineer. Now I'm a journalist.
- 5 Q. How long have you been a journalist?
- 6 A. About 14 years.
- 7 Q. Is there a particular area that you --
- 8 A. I cover high technology. Technology and the environment
- 9 are my two specialties, mostly networking communications.
- 10 Q. Do you know the defendant Daniel Karron?
- 11 A. Yes.
- 12 Q. Do you see the defendant in court?
- 13 A. Yeah. Right there.
- 14 THE COURT: The witness has identified the defendant.
- 15 Q. And how long do you know the defendant?
- 16 A. I'm trying to think of how many years. I guess since I was
- 17 13 or 14. We went to junior high together.
- 18 Q. And have you maintained a relationship with the defendant?
- 19 A. We were in close contact for a long time. Then I fell off
- 20 the face of the planet. I was doing some research. We weren't
- in touch for a couple of years. Danny tracked me down probably
- in 1979 and 1980, and we have been in contact ever since.
- Q. And do you know a company called CASI?
- 24 A. Yes, sir.
- Q. And have you had any involvement with CASI?

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86A7KAR1

Goldberg - direct

- 1 A. I was nominally at least on the board of directors, and I
- 2 did some initial funding.
- 3 Q. Did you ever go to a board meeting?
- 4 A. No, sir.
- 5 Q. Over the time that you have known Dr. Karron, have you been
- 6 able to form an opinion as to his truthfulness and honesty?
- 7 A. Yes, sir.
- 8 Q. What is your opinion, sir?
- 9 A. He is one of the people I trust in this world.
- 10 MR. RUBINSTEIN: Thank you very much.
- 11 THE COURT: Cross-examination.
- MR. EVERDELL: Yes, your Honor.
- 13 CROSS EXAMINATION
- 14 BY MR. EVERDELL:
- 15 Q. Good morning, Mr. Goldberg.
- 16 A. Good morning.
- 17 Q. You said that you were on the board of directors nominally
- 18 for CASI?
- 19 A. Yeah.
- 20 Q. So you didn't attend any board meetings.
- 21 A. No.
- 22 Q. And you never were a part of the day-to-day workings of
- 23 CASI, were you?
- 24 A. No. I reviewed some documents, you know, when he was
- 25 making proposals, I would go over those things. I spent some SOUTHERN DISTRICT REPORTERS, P.C.

86A7KAR1 Goldberg - cross

- 1 time giving advice for whatever it was worth, you know, but a
- lot of times when it was a technical paper I would take a look
- 3 at it to make sure that it was at least in some sort of order
- 4 or in English, comprehensible.
- 5 Q. So on the technical side of things, reviewing documents, is
- 6 that what you said?
- 7 A. Basically it.
- 8 Q. So you didn't have any involvement with the finances of
- 9 CASI?
- 10 A. No, sir.
- 11 Q. You have no idea how they spent their money?
- 12 A. Not particularly.
- 13 O. And you don't know anything about the rules of the ATP
- 14 grants in particular, do you?
- 15 A. Not -- I'm certainly not well versed in it.
- 16 Q. And you didn't actually work in the CASI work space in 2001
- 17 to 2003, did you?
- 18 A. I spent time there, but mostly, you know, mostly as a
- 19 friend and whatever, but I wasn't -- I was in the work space a
- 20 fair amount. I was in there for various reasons that I would
- 21 be there.
- 22 Q. Now, Mr. Goldberg, you own stock in CASI, don't you?
- 23 A. I believe that there is a piece of paper in my files that
- 24 says something to that effect.
- 25 O. You own stock?

86A7KAR1 Goldberg - cross

1 A. I guess so. I haven't looked at it in I don't know how

- 2 many years. It was given to me. I never asked.
- 3 Q. Right. You said also that you have known the defendant
- 4 since you were 13 or 14, right?
- 5 A. Yes, sir.
- 6 Q. So, he is a junior high buddy of yours, right?
- 7 A. Yeah. And?
- 8 Q. And you wouldn't want anything bad to happen to your
- 9 friend, right?
- 10 A. No. And your point is?
- 11 Q. Simply that. No further questions.
- 12 THE COURT: Any redirect?
- MR. RUBINSTEIN: No, your Honor.
- 14 THE COURT: All right. You are excused. Next
- 15 witness.
- 16 (Witness excused)
- 17 (Continued on next page)
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- 1 THE COURT: Next witness.
- Do you need time or are you all right?
- 3 MR. EVERDELL: If this is the next witness, your
- 4 Honor, we would request some time.
- 5 THE COURT: Well, let's see if the witness is here.
- 6 MR. EVERDELL: Yes, your Honor.
- 7 THE COURT: You want to see if he's here, then I'll
- 8 make a decision on the other. Would you just run out and see
- 9 if he's here.
- 10 (Pause)
- 11 MR. RUBINSTEIN: Judge, while the next witness is
- walking in, may I approach with the government?
- 13 (At the sidebar)
- MR. RUBINSTEIN: While the next witness is walking in
- 15 the courtroom, I wanted to --
- 16 THE COURT: All right, sir. Let's hold it.
- 17 MR. RUBINSTEIN: That's the next witness.
- MR. EVERDELL: Your Honor --
- 19 THE COURT: She's been here all --
- 20 MR. RUBINSTEIN: That's why I asked to approach the
- 21 bench, your Honor. I gave the Government all the Master
- 22 Card -- she's a bookkeeper. She has been here assisting me.
- THE COURT: She's a bookkeeper?
- 24 MR. RUBINSTEIN: She's a bookkeeper. She's a
- 25 bookkeeper.

SOUTHERN DISTRICT REPORTERS, P.C.

86azkar2

- 1 THE COURT: I thought it was Windy Farnsworth you
- 2 said.
- 3 MR. RUBINSTEIN: That's a different witness, your
- 4 Honor. The government --
- 5 THE COURT: No notice of this.
- 6 MR. RUBINSTEIN: Because they were supposed to
- 7 stipulate to the Master Card and they won't stipulate. She
- 8 did -- I gave them my own book for the weekend to check over
- 9 and they won't stipulate to the Master Card. I'm forced to
- 10 call a witness. I mean, I stipulated to the American Express.
- I gave them my own copy that they didn't even return till
- 12 Monday, Judge --
- THE COURT: I'll have to --
- MR. RUBINSTEIN: -- of the Master Card and --
- 15 THE COURT: I'll have to excuse the jury 10 minutes or
- 16 so. How long do you need for the preparation?
- 17 (Jury exits the courtroom)
- MR. KWOK: This witness --
- 19 THE COURT: What? I'm not going to allow this
- 20 witness.
- 21 MR. RUBINSTEIN: Judge, they --
- THE COURT: What is the problem?
- 23 MR. RUBINSTEIN: He told me he would stipulate.
- MR. KWOK: I didn't tell you anything.
- 25 MR. RUBINSTEIN: They indicated --Judge, we have had a SOUTHERN DISTRICT REPORTERS, P.C.

86azkar2

- 1 very professional relationship during this case between the
- 2 prosecution and the defense. When they've asked me for
- 3 stipulations, I've given them stipulations, I had talked to
- 4 them about the Master Card. Part of our defense is that he
- 5 spent money on Master Card.
- 6 The only thing this witness is saying, and their
- 7 witnesses had my -- her books, her books for the entire
- 8 weekend. I gave them my original copies. I didn't even have a
- 9 copy for myself. They took it back to Atlanta. They've been
- 10 working with it. They came back late Sunday night with this
- 11 stuff. For them to say that they don't have time is --
- 12 THE COURT: Who is the witness?
- MR. RUBINSTEIN: -- just wrong.
- 14 THE COURT: So just I know, who is the -- what's the
- 15 name of the witness?
- 16 MR. RUBINSTEIN: Deborah Dunlevy. And the only thing
- 17 I want to do is put the Master -- I didn't expect to have a
- 18 problem, Judge, because these are records that --
- 19 THE COURT: Defendant can put in the Master Card.
- 20 MR. RUBINSTEIN: That's if I decide to call him. I
- 21 don't want to --
- 22 THE COURT: Are you going to call him?
- 23 MR. RUBINSTEIN: I don't know yet. I want to see how
- Ms. Farnsworth does.
- The bottom line is that they are, they are, what do SOUTHERN DISTRICT REPORTERS, P.C.

- 1 you ask call it, they won't stipulate. She went over these
- 2 records. The government has never looked at these records
- 3 before I made an issue about it with Riley, and I think that
- 4 it's goes to the heart of the defense. Here he spent almost
- 5 \$50,000 on his Master Card for grant items, and I think that
- 6 the defense should have the opportunity to put that into
- 7 evidence.
- 8 MR. KWOK: No, your Honor. This is --
- 9 MR. RUBINSTEIN: Just like they put in the American
- 10 Express with my stipulations.
- 11 MR. KWOK: This is completely unfair. I did not get
- 12 the stipulation until this morning. And in reviewing those
- 13 records, they are not records from Master Card directly. They
- 14 are just a bunch of numbers created from a ledger. I have no
- 15 assurance where those numbers came from. To say that -- in
- 16 fact, I tried to have Mr. Rubinstein stipulate to a similar
- 17 ledger, and he told me he had no assurance that those numbers
- 18 reflected in the ledger I wanted him to stipulate to.
- 19 THE COURT: We don't have the Master Card bills?
- 20 MR. RUBINSTEIN: Yes, we do. We gave it to them.
- 21 THE COURT: Master Card bills themselves?
- MR. RUBINSTEIN: The --
- 23 THE COURT: I understood from --
- MR. RUBINSTEIN: The statements.
- 25 THE COURT: Just a second. I understood from the SOUTHERN DISTRICT REPORTERS, P.C.

- 1 testimony to date, that all the original transcripts of all
- were destroyed and instead they relied on scanned documents.
- 3 MR. RUBINSTEIN: That's correct, Judge, scanned -- the
- 4 scanned Master Card bills. The monthly statements are -- you
- 5 know, in the modern era of paperless world, this is what people
- 6 do.
- 7 THE COURT: I just wanted to --
- 8 MR. RUBINSTEIN: These are the Master Card --
- 9 THE COURT: So these are scanned, they're not Master
- 10 Card -- but they're the records of the -- business copies of
- 11 Master Card invoices.
- MR. RUBINSTEIN: Right.
- 13 THE COURT: That have been scanned in, is that it?
- 14 MR. RUBINSTEIN: That's correct, your Honor.
- 15 THE COURT: All right.
- 16 MR. RUBINSTEIN: I've given them to the government.
- 17 THE COURT: They're not the originals. Go ahead.
- 18 MR. KWOK: And when Mr. Rubinstein gave me that --
- 19 MR. RUBINSTEIN: Excuse me, just the American Express.
- 20 THE COURT: I want to hear him.
- 21 MR. KWOK: When Mr. Rubinstein gave me that thick
- 22 folder over the weekend, that was in response to our if as when
- 23 subpoena, if your Honor recalls, in the event that the
- defendant testifies, so we can cross him on those records.
- 25 At that point no mention was made about this new

- 1 witness, whose name I just heard a few minutes ago. We've
- 2 never known that this witness existed. She has been in the
- 3 courtroom the whole time hearing all the testimony, and we have
- 4 not heard a word that she would be testifying.
- 5 MR. RUBINSTEIN: Judge, I know --
- THE COURT: She works for the business?
- 7 MR. RUBINSTEIN: She never worked for CASI. She was
- 8 brought aboard afterwards to help compile records.
- 9 THE COURT: When was she brought aboard?
- MR. RUBINSTEIN: Probably in 2004, late 2003, maybe
- 11 2005. I mean, she's been --
- 12 THE COURT: When, approximately? Let's find out.
- MR. RUBINSTEIN: I have no --
- 14 THE COURT: She wasn't an employee during the time
- 15 involved?
- MR. RUBINSTEIN: No, not at all.
- 17 MR. KWOK: And if --
- 18 THE COURT: How can she testify that these were
- 19 records kept in the regular course of business?
- 20 MR. EVERDELL: During the time of the indictment.
- 21 MR. KWOK: And these are personal Master Card records,
- 22 not even CASI corporate records.
- MR. RUBINSTEIN: Exactly exactly.
- 24
- 25 MR. KWOK: So I don't see the relevance.

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 MR. RUBINSTEIN: How could the government --
- THE COURT: I see. I'm sorry.
- 3 MR. RUBINSTEIN: I'm going to ask for the continuance
- 4 to get Master Card here. You know, for the government to have
- 5 the records -- and they had the Master Card records before, and
- 6 I mentioned the Master Card a long time ago. They have all of
- 7 this. For them to try to keep out of evidence legitimate
- 8 evidence that would show the defendant is innocent is, frankly,
- 9 Judge, not professional.
- 10 THE COURT: Well --
- 11 MR. RUBINSTEIN: Okay, it's not professional. I
- 12 expect more than from the representatives.
- 13 THE COURT: I hear that. I'm not going to get into
- 14 that. But I've got to determine whether they're admissible,
- 15 and also whether the Government's had a fair opportunity. What
- is -- where are the records? Let me see a copy of these
- 17 things --
- MR. RUBINSTEIN: Okay, sure.
- 19 THE COURT: -- that you're talking about.
- Have you examined these record? I'm sorry, I better
- 21 wait till he comes back.
- 22 THE DEPUTY CLERK: Do you want me to put the witness
- in the room so everybody can go back to the tables? Because
- the jury is not here.
- 25 THE COURT: I've got to see these records.

SOUTHERN DISTRICT REPORTERS, P.C.

- 1 THE DEPUTY CLERK: I understand.
- 2 MR. EVERDELL: We'll just wait here.
- 3 MR. RUBINSTEIN: Also, Judge, she ordered them also,
- 4 from what I understand, ordered them from the bank and got
- 5 copies and compared them to the original of the Master Card
- 6 statements.
- 7 THE COURT: Let me get my glasses. Which of the
- 8 entries, Mr. Rubinstein --
- 9 MR. RUBINSTEIN: Pardon? Yes, your Honor.
- 10 THE COURT: Come here. Which of the entries do you
- 11 claim are CASI expenses?
- 12 MR. RUBINSTEIN: Which are the entries, your Honor?
- 13 THE COURT: Yes.
- MR. RUBINSTEIN: There are medical --
- 15 THE COURT: Which ones? Let me just see.
- 16 MR. RUBINSTEIN: I'll give you the chart that we have,
- 17 Judge.
- 18 THE COURT: What -- here. Give me this. I just want
- 19 to know -- check off the items you think are business expenses.
- 20 MR. RUBINSTEIN: Okay. Let me get our chart.
- 21 THE COURT: I don't want her --
- MR. RUBINSTEIN: No, no, not her. I want to get it
- 23 from her so I could --
- 24 THE COURT: Well, then give me these records. I'll go
- 25 through them first.

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- 1 MR. RUBINSTEIN: Okay. Where is the chart?
- 2 Your Honor, this is an analysis -- these are the
- 3 expenses that we did not attribute to the grant.
- 4 THE COURT: What?
- 5 MR. RUBINSTEIN: These are over here, your Honor.
- 6 THE COURT: That's the ones you say he can charge to
- 7 the grant.
- 8 MR. RUBINSTEIN: I'm going to show you the ones that
- 9 we're not charging to the grant, your Honor. We have it in the
- 10 negative fashion.
- 11 THE COURT: All you're going to do is show that these
- 12 charges were not charged to the grant.
- 13 MR. RUBINSTEIN: And then the other ones were
- charged -- are charged to the grant are grant expenses; in
- other words, here is the schedule, your Honor, the defendant's
- 16 ZZZ-1, and those are the ones that in our analysis we did not
- 17 charge to the grant. Over here, Judge.
- 18 THE COURT: You're saying that all these Master Card
- 19 charges were not charged to the grant.
- 20 MR. RUBINSTEIN: No. I'm saying they're part of it.
- 21 This is the summary chart of what was -- we say was charged to
- 22 the card that were ATP expenses, attributable either medical --
- 23 THE COURT: Total attributable to -- I mean, where
- 24 does the -- to business expenses?
- MR. RUBINSTEIN: Right.

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- 1 THE COURT: The Statue of Liberty gift?
- 2 MR. RUBINSTEIN: Pardon?
- 3 THE COURT: Statue of Liberty gift, Gristedes?
- 4 MR. RUBINSTEIN: No, we're not. That's --
- 5 THE COURT: What are these?
- 6 MR. RUBINSTEIN: Judge, where's Statue of Liberty
- 7 gift? I don't see anything -- those are excluded. The total
- 8 amount is --
- 9 THE COURT: I don't follow you.
- 10 MR. RUBINSTEIN: The total amount of the card is
- 11 \$90,000, your Honor, that he spent.
- 12 THE COURT: I got these in front of me.
- 13 MR. RUBINSTEIN: Yes. It totals to \$90,000. We are
- 14 attributing \$49,000 to grant related expenses, and the other
- 15 41,000 -- \$40,000 are non-grant, and that goes with the
- 16 Gristedes and the bike shop and cash advance, and clothing, and
- 17 things of that nature.
- 18 THE COURT: Look, when was her exact period of
- 19 employment? Is she being called as an expert, in other words?
- You're doing reconstruction of the books.
- MR. RUBINSTEIN: Expert --
- 22 MR. KWOK: That's exactly what he's doing without
- 23 notice.
- 24 THE COURT: What?
- MR. RUBINSTEIN: Expert bookkeeper -- you wouldn't

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- 1 stipulate. I had no intention of calling -- she's petrified of
- 2 taking the witness stand.
- 3 MR. KWOK: I got the stipulation this morning.
- 4 MR. RUBINSTEIN: You got the records. I gave you her
- 5 original records on Friday. I gave you everything I had on
- 6 her.
- 7 MR. KWOK: You said nothing about expert witness on
- 8 Friday.
- 9 MR. RUBINSTEIN: We talked about a stipulation, we
- 10 talked about -- you said you'll consider a stipulation. I gave
- 11 you all the records on Friday to look over.
- MR. KWOK: You didn't --
- 13 MR. RUBINSTEIN: It's amazing, and they knew about the
- 14 master file before.
- 15 MR. KWOK: I don't know about it. I don't know what
- 16 you're talking about, Mr. Rubinstein. Those records were
- 17 produced in response to the government's if as when subpoena in
- 18 the event the defendant testifies.
- 19 THE COURT: I'm not going to allow her testimony as an
- 20 expert, late notice. So she can not testify that they
- 21 should've charged to the business things that, based on the
- 22 Master Card that they didn't -- she wasn't employed at the
- time, and she had nothing to do with the break down, as I
- understand it. She's -- therefore, she's an expert witness
- 25 doing things in hindsight.

- 1 MR. EVERDELL: Plus she's been in the courtroom the
- 2 entire time, she's been an integral part of defense team, she's
- 3 been at counsel table, she's been reviewing records. She's
- 4 been at counsel table, she's been reviewing records with
- 5 defense counsel, she's been talking to witnesses. This is
- 6 completely inappropriate to call her in any capacity, much less
- 7 in an expert capacity.
- 8 MR. RUBINSTEIN: Judge, she's merely authenticating
- 9 documents that they know are legitimate documents. She's
- 10 authenticating them to get them into evidence.
- 11 I would -- if the government wants to stipulate that,
- 12 we'll agree to stipulate to put these records, all the Master
- 13 Card records into evidence, I won't call her. I won't ask to
- 14 call her, I'll withdraw the application. But I think that it's
- 15 appropriate that the Master Card records go into evidence.
- 16 MR. KWOK: Are these the records we're talking about,
- 17 Mr. Rubinstein?
- 18 MR. RUBINSTEIN: I believe they are.
- 19 MR. KWOK: This stack? Can I review them?
- MR. RUBINSTEIN: Yeah, let me --
- 21 THE COURT: Let him review them.
- 22 MR. RUBINSTEIN: I just grabbed them, and I assume
- 23 that this is what -- yes. There must be additional ones
- 24 because it looks like there's only November, January '03. We
- 25 must be missing a couple. Let me see if there's --

- 1 THE COURT: What's this?
- 2 I want to make a record of this exhibit. ZZZ is a
- 3 summary Master Card breakdown from October 1, 2001 till
- 4 December 31st, 2003 purporting to show total spent, a Master
- 5 Card 90,114.49 and attributable to CASI business expenses
- 6 \$49,944.59. It's a proposed exhibit. It seems to me that
- 7 clearly shows that it's an expert testimony conclusion.
- 8 MR. RUBINSTEIN: Judge, we're going to print them out.
- 9 We have them in the computer.
- 10 THE COURT: Let's get back here and get this thing
- 11 determined, Mr. Rubinstein.
- MR. RUBINSTEIN: We're printing out of the computer
- 13 the statements that were -- these statements.
- 14 THE COURT: The ones you handed me were incomplete.
- MR. RUBINSTEIN: Yes, they're just '02 statements.
- 16 We're missing --
- 17 THE COURT: Those are the ones that the witness handed
- 18 you.
- 19 MR. RUBINSTEIN: No. I took her book when she wasn't
- 20 here, Judge, and I brought -- I took --
- 21 THE COURT: And she doesn't have them; they're coming
- 22 out of the computer now?
- 23 MR. RUBINSTEIN: Yes. She had them. She's -- it's
- 24 not relevant what --
- THE COURT: Now, what are we going to do?

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- 1 MR. RUBINSTEIN: So we're printing out the rest of the
- 2 statements during the grant period, and we'll -- and ask the
- 3 government to stipulate that these are his Master Card
- 4 statements.
- 5 MR. KWOK: His personal.
- 6 MR. RUBINSTEIN: Personal Master Card statements.
- 7 MR. KWOK: Government has no problem with that, just
- 8 that these are his Master Card records for his personal Master
- 9 Card, and they are what they purport to be.
- 10 MR. EVERDELL: But let's be specific. We're not
- 11 stipulating to any analysis of them.
- MR. KWOK: Just these records.
- 13 MR. RUBINSTEIN: Just the record, just the records.
- 14 THE COURT: All right, can we go ahead?
- MR. RUBINSTEIN: Yes.
- 16 MR. EVERDELL: We need to look at the full set of
- 17 records.
- 18 THE COURT: You'll call Ms. Farnsworth first?
- 19 MR. RUBINSTEIN: I'll call Ms. Farnsworth first.
- 20 MR. KWOK: Do we have time to prepare for Ms.
- 21 Farnsworth?
- 22 MR. EVERDELL: We haven't been able --
- 23 MR. KWOK: Just dealing with all these new surprises.
- MR. EVERDELL: If we can have 15, 20 minutes just to
- 25 look --

- 1 THE COURT: All right, run down get that. Let's go.
- 2 MR. EVERDELL: Thank you, your Honor.
- 3 THE COURT: Come back as soon as you can.
- 4 (Recess)
- 5 (In open court; jury not present)
- 6 THE COURT: All right, are we ready, ladies and
- 7 gentlemen?
- 8 MR. RUBINSTEIN: Yes. I will call the next witness.
- 9 I have my associate photocopying all the statements so that
- 10 everybody has a set, but I'll call Miss Farnsworth now.
- 11 THE COURT: What?
- MR. RUBINSTEIN: I'll call Miss Farnsworth now and
- 13 we'll have the records for them in total.
- 14 THE COURT: Have you made a decision yet or has your
- 15 client made a decision yet about the other aspect?
- 16 MR. RUBINSTEIN: Yes, we made a decision. We'll rest
- 17 after we submit the Master Card bills.
- 18 THE COURT: I think the government consented to that.
- 19 MR. RUBINSTEIN: Yes.
- MR. KWOK: Yes.
- 21 THE COURT: As personal -- his personal Master Card.
- MR. RUBINSTEIN: Right.
- 23 THE COURT: But I meant I wasn't referring to that
- 24 decision -- I was referring to the other decision, just because
- 25 I don't want to have to excuse the jury again if you made a

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- 1 decision about calling the defendant.
- MR. RUBINSTEIN: No, that's what I said, Judge, that
- 3 we made that decision not to call the defendant.
- 4 THE COURT: Not to call.
- 5 MR. RUBINSTEIN: Not to call him.
- 6 THE COURT: Then I have to ask Dr. Karron a couple --
- 7 my practice, to ask Dr. Karron a couple of questions.
- 8 MR. RUBINSTEIN: Oh, surely.
- 9 THE COURT: Dr. Karron, you understand that you have a
- 10 right to testify in this case.
- 11 THE DEFENDANT: Yes, I do.
- 12 THE COURT: And after consultation with Mr.
- Rubinstein, you've decided that you do not want to testify?
- 14 THE DEFENDANT: Mr. Rubinstein has --
- THE COURT: I'm sorry?
- 16 MR. RUBINSTEIN: The Judge asked you a question.
- 17 THE DEFENDANT: Mr. Rubinstein has convinced me that
- it would be in the best interest not to testify.
- 19 THE COURT: Well, that isn't what I'm asking you. I'm
- 20 asking you -- you have the final decision --
- 21 THE DEFENDANT: I've made the final decision.
- 22 THE COURT: -- about whether you testify or not. So I
- 23 want to know whether you've made that decision yourself or
- 24 whether your just going along with whatever Mr. Rubinstein
- 25 says.

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- 1 THE DEFENDANT: I've made the final decision.
- THE COURT: You have?
- THE DEFENDANT: Yes, sir.
- 4 THE COURT: Not to testify?
- 5 THE DEFENDANT: That is correct.
- 6 THE COURT: All right. I just wanted to -- and it's
- 7 your own determination?
- 8 THE DEFENDANT: In consult with my advisor.
- 9 THE COURT: I'm sorry.
- 10 THE DEFENDANT: I would -- yes. The answer is yes.
- 11 It's a well considered decision. I've talked about it at
- 12 length with all my advisors, all my friends, all my characters.
- 13 THE COURT: All right, that's all. I just wanted to
- 14 be sure it was your decision. Because sometimes we have
- 15 litigation that arises after a case, and some judges don't
- 16 follow the procedure that I follow. And I follow that
- 17 procedure because it seems to me that is the way it should be
- 18 asked. But that's my own. I won't say that it's appropriate
- 19 since some Judges don't do it.
- 20 MR. RUBINSTEIN: I think it is, and I've -- you're the
- 21 only Judge that ever did it, and I am appreciative that you do
- it, Judge.
- 23 THE COURT: All right.
- 24 MR. RUBINSTEIN: It's very --
- THE COURT: All right, let's get the jury. Let's have SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 Miss Farnsworth, let's get the Master Card in. And then the
- 2 government has rebuttal?
- MR. KWOK: I don't think we do.
- THE COURT: Well, you'll be asked.
- 5 (Jury entering; jury present)
- 6 THE COURT: All right, please be seated.
- 7 Your next witness, Mr. Rubinstein.
- 8 MR. RUBINSTEIN: Yes, your Honor.
- 9 WINDY LYNNE FARNSWORTH,
- 10 called as a witness by the defendant,
- 11 having been duly sworn, testified as follows:
- 12 DIRECT EXAMINATION
- 13 BY MR. RUBINSTEIN:
- Q. Good morning, Ms. Farnsworth. Have we met?
- 15 A. Just before I came to court, outside.
- 16 O. Now --
- 17 A. Outside.
- 18 Q. What is your business or occupation?
- 19 A. I am an engineer. I currently work for AS&L Lithography in
- 20 Wilton, Connecticut. I'm a senior engineer in that position,
- 21 and I've been there approximately two-and-a-half years, and
- 22 I've been an employee of engineering pretty much my entire
- 23 life, adult life.
- Q. And where do you reside?
- 25 A. I currently reside in New Millford, Connecticut.

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86azkar2 Farnsworth - direct

1 Q. And do you know -- how long do you reside in New Millford,

- 2 Connecticut?
- 3 A. I purchased that home in December, 2000, and I've been
- 4 there ever since.
- 5 Q. And do you know the defendant, Daniel Karron?
- 6 A. Yes, I do.
- 7 Q. Dr. Karron? Do you see the defendant in court?
- 8 A. Yes.
- 9 Q. Could you point him out, please?
- 10 A. Right there.
- 11 MR. RUBINSTEIN: Indicating the defendant, your Honor.
- 12 THE COURT: The witness -- the record will indicate
- 13 the witness has identified the defendant.
- Q. Now, when did you meet the defendant?
- 15 A. I met the defendant in, I think early Spring, 1999 when I
- 16 was out on the east coast for a job interview. I had gotten
- 17 his name from a mutual friend to meet when I came out here on
- 18 the east coast for that interview. And I don't think we
- 19 actually met at that time, but we spoke on the telephone.
- 20 Q. And where did you come from?
- 21 A. I came from the Salt Lake area, South Jordan, Utah.
- 22 Q. And did there come a time when you met the defendant?
- 23 A. Yeah. Yes, I did meet the defendant in, I believe it was
- 24 when I finally came out to live and reside in the New York area
- 25 in April, 1999.

Farnsworth - direct

- 1 Q. And when you came to reside in the New York area, where did
- 2 you reside?
- 3 A. I got an apartment in Seldon on Long Island, and I was
- 4 there until I lost my job due to financial cutbacks in the
- 5 company I was working for, in fall of 1999.
- 6 Q. And where did you move when -- from Seldon after you lost
- 7 your job?
- 8 A. I moved into New York into the defendant's apartment as a
- 9 roommate.
- 10 Q. And how long did you stay there?
- 11 A. Approximately a year.
- 12 Q. Did you have a personal relationship with the defendant?
- 13 A. We were friends, and that was about as far as it went. We
- were not intimate in any way.
- 15 Q. And so how long did you stay in the -- was this at the
- apartment at 300 East 33rd Street, apartment 4N?
- 17 A. That's correct.
- 18 Q. And which portion of the apartment did you utilize?
- 19 A. I lived in the living room, which is -- essentially, would
- 20 be called the living room. I had a steel bunk bed. All of my
- 21 personal belongings that I didn't have in storage were there,
- 22 my clothing and my other personal effects, and that's pretty
- 23 much where I stayed. I had the bed above it for guests, and
- then I had the bed on the bottom for myself.
- Q. Now, did you pay the defendant any for living there?

 SOUTHERN DISTRICT REPORTERS, P.C.

Farnsworth - direct

- 1 A. Yes. I paid rent while I was there each month. I also
- 2 contributed toward groceries and other sort of things that, you
- 3 know, transportation, that sort of thing.
- 4 Q. So how long did you stay there altogether?
- 5 A. I think -- my recollection is I was there from fall 1999
- 6 until about November of 2000 when I moved into my house in New
- 7 Millford.
- 8 Q. And have you remained in contact with the defendant since
- 9 that time?
- 10 A. Yes, I have.
- 11 Q. On a regular basis?
- 12 A. Yeah, off and on.
- 13 O. And has the defendant visited you in New Millford,
- 14 Connecticut?
- 15 A. Off and on. Not terribly often, but yeah. I mean, as far
- 16 as friends are concerned, you know, on occasion.
- 17 Q. Has the defendant stayed over your house?
- 18 A. Yes, overnight occasionally.
- 19 Q. And how -- could you describe your house for us?
- 20 A. I have a two story home, approximately 1600 square feet.
- 21 There's three bedrooms and a basement, living room area, dining
- 22 room.
- 23 Q. And did you have, in 2001 or 2002, did you rent out any
- 24 portion of your home?
- 25 A. D. B. Karron had proposed to rent a room from me during the SOUTHERN DISTRICT REPORTERS, P.C.

86azkar2 Farnsworth - direct

- 1 time of the grant, when it became difficult for his apartment
- 2 to be a residence. He never actually moved in on a permanent
- 3 basis, though, but did store equipment in my basement for a
- 4 period of time.
- 5 Q. Did you sign a lease?
- 6 A. I did sign a lease. We decided to not honor it because the
- 7 conditions changed with the grant.
- 8 Q. What was the length of the lease?
- 9 A. I believe it was for a year.
- 10 Q. Now, did Dr. Karron give you any monies?
- 11 A. Yes. D. B. Karron did pay me for a first month and a last
- 12 month for the -- so upfront money for the lease.
- 13 Q. Did Dr. Karron ever actually stay at your home?
- 14 A. Just briefly.
- 15 Q. Pursuant to the lease, did he ever really -- did he ever
- 16 actually move in?
- 17 A. He never actually moved in, in like that he brought a lot
- of his personal effects, but he did come and stay on weekends,
- 19 for instance.
- 20 Q. All right. Did your have occasion to give Dr. Karron any,
- any items that you owned?
- 22 A. Well, I give things to people, I'm quite generous. And I
- 23 do recall one of the things that I gave Dr. Karron was a shoe
- 24 rack.
- 25 Q. Let me show you what's in evidence as a government

SOUTHERN DISTRICT REPORTERS, P.C.

86azkar2 Farnsworth - direct

- exhibit -- I show you what's in evidence as Government's
- 2 Exhibit 125.
- 3 A. Uh-huh.
- 4 Q. Do you recognize this item?
- 5 A. Yes, I do.
- 6 Q. And how do you recognize this item?
- 7 A. It was the rack that I gave D. B. Karron when I purchased
- 8 one that sat on the floor instead of one that hung on the door.
- 9 O. Pardon?
- 10 A. I gave it to Dr. Karron when I replaced it with a different
- 11 type.
- 12 Q. And why did you replace it?
- 13 A. Because it was on the back of the door, and when I closed
- 14 the door the shoes would fall off all the time. And so I put
- one that was on the floor that carried more shoes and didn't
- 16 fall off all the time.
- 17 Q. And where did you purchase this? Did you purchase this or
- 18 was it --
- 19 A. My recollection is I purchased it at K-mart in New
- 20 Millford, in the town that I live in.
- Q. And do you recall when it was that you gave D. B. Karron
- 22 Government's exhibit 125?
- 23 A. Well, I -- h'mm. I would guess probably somewhere around
- the maybe 2002, 2003 timeframe.
- THE COURT: Did you give it to him in Connecticut?

 SOUTHERN DISTRICT REPORTERS, P.C.

86azkar2 Farnsworth - direct

1 MR. RUBINSTEIN: No further questions, your Honor.

- 2 I'm sorry, Judge.
- 3 THE COURT: I'm sorry.
- 4 MR. RUBINSTEIN: You asked a question?
- 5 THE COURT: Did you give it to him in Connecticut?
- 6 THE WITNESS: I'm not certain I know the answer to
- 7 that question. I may have brought it with me to New York on a
- 8 visit. I don't -- really don't recall.
- 9 THE COURT: You don't recall?
- 10 THE WITNESS: No.
- 11 THE COURT: All right.
- 12 BY MR. RUBINSTEIN:
- 13 Q. After --
- 14 THE COURT: I do recall giving it to him, but I don't
- 15 recall where I gave it to him.
- 16 BY MR. RUBINSTEIN:
- 17 Q. When were you asked -- when were you asked about this?
- 18 A. The Judge asked me where I gave it to him, was it in
- 19 Connecticut that I gave it to him, and I wasn't certain I knew
- 20 where I gave it to him.
- 21 Q. When was it that you discussed the fact that you had given
- 22 Dr. Karron this rack, when was the -- when did you discuss this
- 23 before you came to court?
- 24 A. Well, I believe yesterday evening D. B. Karron told me
- 25 that --

86azkar2 Farnsworth - direct

1 Q. Don't tell us what he told you. You're not allowed to tell

- 2 what he told you.
- 3 A. Well, he -- he told me that I was going to get a call from
- 4 you, and that I would be asked to testify about, among other
- 5 things, perhaps something I gave him. And so he says, do you
- 6 recall the shoe rack that you gave me? And I says, oh, yeah,
- 7 that shoe rack, yeah. Well, the government took it as
- 8 evidence. And I said oh, really? And so he says, will you --
- 9 are you willing to testify about that? And I said yes, I
- 10 would, you know.
- 11 MR. RUBINSTEIN: Thank you. No further questions.
- 12 THE COURT: All right.
- 13 CROSS EXAMINATION
- 14 BY MR. KWOK:
- 15 Q. Good morning.
- 16 A. Good morning.
- 17 Q. You mentioned a moment ago that the defendant never lived
- in Connecticut, correct, with you?
- 19 THE COURT: I'm sorry, I didn't catch your question.
- 20 Q. A moment ago you testified that the defendant never lived
- with you in Connecticut, is that correct?
- 22 A. That's correct.
- 23 Q. So from the period from 2000 to 2003, as far as you know,
- the defendant was living in midtown Manhattan, isn't that true?
- 25 A. That's correct.

86azkar2 Farnsworth - cross

- 1 Q. The same place that you lived at for --
- 2 A. The same residence that I lived at, yes.
- 3 Q. Did you visit him there at that location?
- 4 A. On occasion. On the weekends we, you know, would do things
- 5 like, for instance, we would, would ride our bikes around Lower
- 6 Manhattan, and get exercise, and do things that friends do.
- 7 Q. Did it appear to you while you were visiting that
- 8 apartment, that the defendant lived there?
- 9 A. After a fashion, it was a difficult place to live. It was
- 10 noisy, and more an office than an apartment.
- 11 Q. Right. Let me show you government Exhibit 101, page eight,
- 12 if we could pull that up on the screen could we zoom in -- zoom
- into the highlighted item.
- 14 Now, a moment ago you testified about the shoe rack;
- 15 you remember that?
- 16 A. Uh-huh.
- 17 Q. Do you know what happened to this shoe rack?
- 18 A. Oh, I don't really know. A Navy nylon ten -- do you know
- 19 what that is?
- 20 Q. Well, let me zoom out. Can we zoom out? Can we zoom in on
- 21 the name, just on top of that list?
- 22 THE COURT: I'm sorry, what are you --
- 23 BY MR. KWOK:
- Q. What does that say?
- 25 A. It says, D. B. Karron.

86azkar2 Farnsworth - cross

- 1 MR. KWOK: No further questions.
- 2 THE COURT: Any redirect, Mr. Rubinstein?
- 3 MR. RUBINSTEIN: Would you put that exhibit back up,
- 4 please?
- 5 THE COURT: Yes.
- 6 MR. RUBINSTEIN: Would you move the yellow line down
- 7 to here? Over here, yeah. Right there.
- 8 REDIRECT EXAMINATION
- 9 Q. Do you see that name, Miss Farnsworth?
- 10 A. I see. It says something like Jonathan Mason.
- 11 Q. Did you know a -- did you ever come in contact with a
- 12 contractor who did some work at Dr. Karron's apartment?
- 13 A. Well, there were a number of contractors who did come in
- 14 and do work on occasion. I don't specifically recognize -- I
- think there was somebody named John, yes.
- 16 THE COURT: Did he have a British accent?
- 17 THE WITNESS: Oh, yeah, I think so. Yeah.
- 18 MR. RUBINSTEIN: Okay. I have no further questions.
- 19 MR. KWOK: No further questions, your Honor.
- 20 THE COURT: All right. Thank you very much. Next
- 21 witness.
- 22 THE DEPUTY CLERK: Witness is excused?
- THE COURT: Yes, you're excused.
- THE WITNESS: Am I excused?
- 25 (Witness excused)

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86azkar2 Farnsworth - redirect

- 1 THE COURT: Next witness, Mr. Rubinstein.
- 2 MR. RUBINSTEIN: May I approach the government, your
- 3 Honor?
- 4 THE COURT: Yes. Do you have an exhibit?
- 5 (Pause while counsel confer)
- 6 MR. RUBINSTEIN: Your Honor, we will -- your Honor, at
- 7 this time there is a stipulation between the United States of
- 8 America by Assistant United States Attorney Steven Kwok and Dr.
- 9 Karron, that -- and this is, this stipulation will be marked as
- 10 defendant's ZZZ. Stipulation provides that the defendant's
- 11 ZZZ-1 are the personal Master Card accounts, statement for Dr.
- 12 D. B. Karron's personal Master Card account number 5263, 2710,
- 13 0928, 1872. Statements are from October 1st, 2001, through
- 14 June 30th, 2003.
- 15 THE COURT: Stipulated into evidence?
- MR. RUBINSTEIN: I, or into evidence defendant's
- 17 ZZZ-1.
- 18 THE COURT: Stipulation is ZZZ, and the Master Card
- 19 records of, personal Master Card records of Dr. Karron are
- 20 marked ZZZ-1?
- MR. RUBINSTEIN: Yes, your Honor.
- 22 THE COURT: They are admitted in evidence.
- 23 (Defendant's Exhibits ZZZ and ZZZ-1 received in
- 24 evidence)
- 25 THE COURT: Next witness.

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1 MR. RUBINSTEIN: And with that, your Honor, the

- 2 defendant respectfully rests.
- 3 THE COURT: Government?
- 4 MR. KWOK: Government rests.
- 5 THE COURT: Well, jury, you've now heard all the
- 6 evidence and have the exhibits, but we have to prepare for the
- 7 summations of counsel. And it is my practice to give them a
- 8 copy of the charge so they can be familiar with what the charge
- 9 is and make recommendations for changes in it. And I think it
- 10 would be a waste of your time to remain here today because the
- 11 charging conference generally takes at least an hour, and
- 12 counsel haven't had an opportunity to read the charge yet. I
- think that's a better way, and come back tomorrow and, at 9:30,
- 14 and you'll hear the summations of counsel and the charge of the
- 15 Court. You should have the case tomorrow morning at the end of
- the morning, if you could get here at 9:30, and the heat isn't
- 17 too bad. So you're excused until 9:30 tomorrow morning.
- 18 Please be prompt and we'll try and get you the case by
- 19 lunchtime.
- 20 (Jury exits the courtroom)
- 21 THE COURT: All right.
- 22 (Jury not present)
- 23 THE COURT: You'll want time to go over the charge.
- What time do you want to meet on the charge, counsel?
- 25 MR. RUBINSTEIN: You want to meet at 2:00 o'clock,

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1	your Hone	or?
2		THE COURT: At 2:00 o'clock. Enough time? Okay.
3		MR. RUBINSTEIN: I would think so.
4		THE COURT: It ought to be. It's 12:00 o'clock now
5		MR. EVERDELL: Yeah.
6		THE COURT: Fine.
7		MR. KWOK: That's fine.
8		THE COURT: All right, see you at 2:00 o'clock.
9		MR. KWOK: Thank you.
10		MR. RUBINSTEIN: Thank you, your Honor.
11		THE COURT: For the charge.
12		(Luncheon recess)
13		(Continued on next page)
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- 1 AFTERNOON SESSION
- 2:10 p.m.
- 3 THE COURT: Has everyone had a chance to go over the
- 4 charge? I have a number ever changes myself that I found, so
- 5 why don't we go to four pages in. I don't think we have any
- 6 stipulations of testimony, did we?
- 7 MR. KWOK: No, we did not, your Honor.
- 8 THE COURT: Strike that bottom of page 3.
- 9 MR. EVERDELL: To the top of page 4?
- 10 THE COURT: To the top of page 4, and strike the
- "also" in the following paragraph?
- MR. RUBINSTEIN: Yes, your Honor.
- MR. KWOK: Yes.
- 14 THE COURT: Anything up until page 11?
- 15 MR. KWOK: At the bottom of page 11 there is a section
- on law enforcement witness.
- 17 THE COURT: That's what I was coming to. I don't
- 18 think we need law enforcement witness. Does anyone want
- 19 government employee?
- MR. RUBINSTEIN: Well, isn't OIG law enforcement?
- 21 Riley is OIG.
- 22 THE COURT: She is an enforcement person?
- MR. RUBINSTEIN: Well, she works for the Office of
- 24 Inspector General.
- 25 THE COURT: She is not enforcement. She is not law SOUTHERN DISTRICT REPORTERS, P.C.

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1 enforcement. She is an auditor. I thought government employee

- 2 would be sufficient.
- 3 MR. RUBINSTEIN: That's fine.
- 4 THE COURT: And you can have that. So, I will just
- 5 make that change in the first, second and next to last line on
- 6 that page.
- 7 As I go through, the next thing would be defendant's
- 8 testimony, which we would strike. Is everyone happy up to page
- 9 13?
- 10 MR. RUBINSTEIN: I have nothing going on up to page
- 11 13, your Honor.
- 12 THE COURT: Anything from 13 up to 20? 18, I guess I
- 13 should say.
- MR. RUBINSTEIN: None by the defense.
- 15 THE COURT: I will read the indictment aloud. Then I
- 16 have quoted from the statute. Does anyone have any problem?
- MR. RUBINSTEIN: No, your Honor.
- MR. KWOK: No, your Honor.
- 19 THE COURT: Now, I get over to the next section, page
- 20 19. Can't we eliminate "property" and just -- it says money or
- 21 property. And this case doesn't involve any property as I
- 22 understand it. It's in the statute. People will hear it in
- 23 the statute or hear it in the indictment, but it really
- 24 involves money, so I thought I could eliminate the word "or
- 25 property" throughout. But I want to hear from counsel.

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- 1 MR. KWOK: The government has no problem with that.
- 2 MR. RUBINSTEIN: I have no problem with it, Judge.
- 3 THE COURT: So then on page 19 I will strike "or
- 4 property".
- 5 MR. RUBINSTEIN: It's in third element and fifth
- 6 element.
- 7 THE COURT: Third, fourth and fifth element.
- 8 Now, I would put the "without authority" after the
- 9 defendant, I think, in the third paragraph as opposed to having
- it at the end of the paragraph.
- 11 MR. RUBINSTEIN: Where are you saying, your Honor?
- 12 THE COURT: In the third paragraph, paragraph three, I
- 13 would take the "without authority" which I tagged on to the end
- 14 of the third element and place it after the defendant, so that
- 15 it mirrors the way in which the statute language is in
- paragraph (a)(1)(A) of Section 666. And I would also be
- inclined to strike "belonged to" in the fourth paragraph.
- 18 Misapplied money under the care, custody and control of CASI.
- 19 MR. RUBINSTEIN: Well, let's deal with -- I don't have
- 20 a problem with striking "or property". What I have is a
- 21 problem with the language "misapplied money belonging to the
- 22 care and control of CASI" because either --
- 23 THE COURT: I would strike the "belong to" and just
- 24 say "under the care, custody or control of CASI."
- 25 MR. RUBINSTEIN: But, your Honor, this definition -- I
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- 1 think your Honor should put that this definition does not
- 2 include any monies of Dr. Karron, whether salary or otherwise.
- 3 I mean the fact of the matter is it's our contention that it
- 4 wasn't just money.
- 5 The way it reads now any money spent by CASI, you are
- 6 suggesting that it belongs to the grant.
- 7 THE COURT: No, I'm trying not to suggest that. I'm
- 8 trying to limit that so that in fact it has to be grant money
- 9 that's misapplied.
- 10 MR. RUBINSTEIN: Well, would your Honor consider
- "misapplied grant money"?
- 12 THE COURT: Well, maybe the smart thing to do is to
- 13 address how we phrase the third or fourth element -- the fourth
- 14 element.
- 15 After you read the changes that I think are necessary
- in the longer versions of the elements, since after we mention
- what the elements of the crime charged are, then I go into what
- 18 those elements are and give further instructions on them. And
- 19 I have got changes there that I think once you listen to, then
- 20 we can go back and see whether the shortened version that's
- 21 supposed to tell the jury what the elements are is a fair
- 22 statement of the longer version. All right?
- 23 So, by going to the second element -- because I don't
- think there is a problem in terms of the first element, being
- 25 an agent of CASI. I think you probably all agree with that.

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- 1 MR. RUBINSTEIN: We concede that.
- 2 THE COURT: The second element, I would like to add at
- 3 the end -- I have this last sentence. "You can choose any
- 4 period of federal funding you want, " and I would say, "as long
- 5 as" -- which is in there -- "you unanimously find that the acts
- of misapplication charged in the indictment occurred in that
- 7 one year period."
- 8 So, I would make them have a unanimous finding of a
- 9 period of one year, what that consists of, whether it begins
- 10 October 1 or January 1 and ends on September 30 or December 31.
- 11 MR. KWOK: The government has no problem with that.
- 12 MR. RUBINSTEIN: I have no problem with that, your
- 13 Honor.
- 14 THE COURT: Then when you get to the third element I
- 15 struck the word "property" out. Then I added in the first full
- 16 paragraph on page 21, "In this case, to intentionally misapply
- 17 property means to intentionally apply grant money received by
- 18 CASI in a manner in which the defendant knew was unauthorized
- 19 under the terms and conditions of the grant."
- 20 MR. RUBINSTEIN: I would just ask that your Honor put
- in there "excluding salary".
- 22 THE COURT: Right after that, "Misapplication of
- 23 money, however, does not apply to bona fide salary, wages,
- 24 fringe benefits or other compensation paid or expenses paid or
- 25 reimbursed in the usual course of business." So, that's the

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- 1 following sentence. So, it seems to me that covers what you
- just suggested.
- 3 MR. RUBINSTEIN: I think so, Judge. I know that the
- 4 last line in the paragraph above is what your Honor spoke to us
- 5 about, "and even if such use benefited CASI in some way," and
- 6 that's language from the Tenth Circuit case. I'm not very
- 7 happy with the Tenth Circuit in this case, and I would have to
- 8 object to the inclusion of --
- 9 THE COURT: I'm not sure whether it is or is not in
- 10 the Tenth Circuit. I think it's from Erlacker.
- 11 MR. RUBINSTEIN: I am afraid it was in Erlacker.
- 12 MR. EVERDELL: Erlacker is the Second Circuit case.
- 13 MR. RUBINSTEIN: Erlacker is the Southern Circuit.
- 14 THE COURT: Second Circuit.
- 15 MR. RUBINSTEIN: Yeah. I saw Erlacker. A lot of
- 16 times cases are fact driven.
- 17 THE COURT: I agree they are fact driven, and that's
- 18 why I didn't follow Erlacker and I followed the Tenth Circuit.
- 19 I also think it's in Sand as that way.
- 20 But I distinguished Erlacker, because in Erlacker it
- 21 involved funds that the police department received, and what
- 22 the defendant did there was to disregard the instructions of
- 23 his superiors about how money should be spent, and that seems
- 24 to me to be a different situation than the case here, where you
- have a not-for-profit headed by the defendant who received the

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- 1 grant. It's more like a not-for-profit in the Tenth Circuit
- 2 case. Then we had another case where we found the same
- 3 language in -- the Tenth Circuit case being United States v.
- 4 Frasier, 53 F.3d 1105. And when I looked at the Tenth Circuit
- 5 case, they state the actual elements that the government was
- 6 required to prove, and that's what alerted me to the "without
- 7 authority" being applicable to the intentional misapplication
- 8 of property.
- 9 MR. RUBINSTEIN: Well, that's what my concern is, that
- 10 that language kind of gives an instruction that says that's the
- intent, and it takes the intent issue away from the jury's
- 12 determination. That's my concern.
- 13 THE COURT: I'm sorry. I don't want to take anything
- 14 away from the jury, so let me understand what your point is.
- 15 MR. RUBINSTEIN: I just feel, your Honor, that the
- 16 language "even if such use benefited CASI in some way" -- now,
- 17 the defendant's intent was, we intend to argue, was to benefit
- 18 CASI. And we have the situation where we don't have a
- 19 direction or a commandment that you have to use the money A, B
- 20 or C. We have a kind of fluid situation here under the ATP
- 21 grant that you are allowed to revise.
- 22 THE COURT: In some ways the ATP grant is fluid in for
- 23 instance the 10 percent rule and in some other ways, but those
- 24 are -- I tried to avoid in this language anything that would
- 25 influence the jury in any way.

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- 1 In fact, what it does is -- I will read that sentence
- again to you, or I will read the paragraph to you so to make
- 3 sure you have it, because I don't quite understand how I'm
- 4 taking away anything from the jury's determination.
- 5 "In this case, to intentionally misapply money means
- 6 to intentionally apply the grant money received by CASI in a
- 7 manner in which the defendant knew it was unauthorized under
- 8 the terms and conditions of the grant. Misapplication of
- 9 money, however, does not apply to bona fide salary, wages,
- 10 fringe benefits or other compensation paid, or expenses paid,
- or reimbursed in the usual course of business."
- 12 Now, taking the next paragraph too. "As I said, the
- 13 government must prove beyond a reasonable doubt that the
- 14 defendant acted intentionally in misapplying CASI's money. To
- 15 find that the defendant acted intentionally, you must be
- 16 satisfied beyond a reasonable doubt that the defendant acted
- deliberately and purposefully, that is, the defendant's
- 18 misapplication must have been the product of the defendant's
- 19 conscious objective to spend the money for an unauthorized
- 20 purpose rather than the product of a mistake or accident or
- 21 some other innocent reason."
- The government may have some objection.
- 23 MR. KWOK: No, the government thinks that this is a
- 24 very fair instruction. We understand why Mr. Rubinstein might
- 25 object to the "even if such use benefited CASI in some way"

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language, but that's the law according to the Second Circuit

- and the Frasier case that your Honor cited from the Tenth
- 3 Circuit.
- 4 MR. RUBINSTEIN: Judge, I don't think I want to waive
- 5 this objection.
- 6 THE COURT: You have made your objection. I have no
- 7 objection to objection, but if you want to reason with me, I'm
- 8 perfectly open to hearing whatever reason you have.
- 9 MR. RUBINSTEIN: I think that I have exhausted my
- 10 reasoning at this point that this is a fluid situation and
- 11 that, therefore, there was no commandment that it was this way
- or the highway kind of talk.
- 13 We had in Exhibit 4 that you can revise the budget at
- 14 the end of the year, clearly and particularly in this case,
- 15 where they never went through the process of resolving these
- issues within the agency, so --
- 17 THE COURT: Well, one of the issues -- but I don't
- 18 think you want me to approach it this way -- but one of the
- 19 issues, it is true that some of the evidence that was
- 20 offered -- and if you want me to strike it, I will move to
- 21 strike some of that evidence -- does not really go to what the
- 22 government is required to prove here.
- 23 I think I mentioned earlier the purchase of the movie
- 24 screen or what have you, I don't think that was shown to have
- 25 exceeded the budget, or the flexibility under the budget, or

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- 1 that it was something that was not -- that required approval by
- 2 the grantor. There are some items like that that may have been
- 3 offered in evidence that I don't think -- and I haven't heard
- 4 from the government on this. It may be that they can show that
- 5 it exceeded the budget, but I didn't pick it up in listening to
- 6 the evidence that there was required approval for that
- 7 expenditure.
- 8 And I don't think there would be any required
- 9 approval -- prior approval for a number of the expenditures
- 10 that were made because they weren't appropriate under the terms
- 11 of the grant, because they were for indirect costs of the
- 12 business and not shown to be costs for the research undertaken
- 13 by CASI for the National Institute of Technology and Science --
- or Science and Technology. Because there are -- I mean --
- 15 Well, then the fourth element, I don't think it's
- 16 misapplied money belonging to CASI. It's under the control of
- 17 CASI.
- MR. EVERDELL: Your Honor, just so I'm clear, are you
- 19 also carrying forward the change "belong to," cutting that out?
- 20 THE COURT: I was going to strike out that.
- MR. RUBINSTEIN: What's that?
- 22 THE COURT: I was going to strike out "belong to".
- 23 MR. EVERDELL: And then just have "was in the control
- of CASI"? Is that what you're proposing?
- 25 THE COURT: In the joint custody or control of CASI.

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- 1 I was going to leave that.
- 2 MR. EVERDELL: Yeah.
- 3 MR. RUBINSTEIN: I would ask for the same language
- 4 that you have in the first full paragraph under element 3.
- 5 THE COURT: First full paragraph where?
- 6 MR. RUBINSTEIN: On element 3, page 21, that that be
- 7 included. In other words, what I'm concerned about is that
- 8 they may confuse money that was in the care or custody.
- 9 THE COURT: Well, do you want me to say misapplied
- 10 grant money?
- 11 MR. RUBINSTEIN: Misapplied grant money subject to the
- 12 limitation of element 3. Because it's the grant money received
- 13 by CASI. And then it goes on to say bona fide salary, wages,
- 14 fringes and benefits. I mean I think that that has to be
- included in element 4.
- 16 THE COURT: Let me think about that a second.
- 17 the second full paragraph should be changed to say --
- 18 MR. RUBINSTEIN: Judge, I think that you could
- 19 actually charge them just up to the word "intentionally
- 20 misapplied".
- 21 "The fourth element the government must prove beyond a
- reasonable doubt is that the money was intentionally
- 23 misapplied."
- MR. KWOK: Your Honor --
- MR. EVERDELL: Your Honor, this is starting to sound SOUTHERN DISTRICT REPORTERS, P.C.

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1 suspiciously like a tracing requirement. This element simply

- 2 talks about where the money was housed, where the funds that
- 3 came in were put. They were put in CASI's bank accounts. The
- 4 evidence at trial was ample. They all went into CASI's bank
- 5 accounts, the company bank accounts. There is no tracing
- 6 requirement under the Second Circuit law.
- 7 The issue about bona fide wages and salary is
- 8 appropriately in the third element because that has to do with
- 9 intentional misapplication of money and what doesn't count as
- 10 intentional misapplication of money. It doesn't count for bona
- 11 fide wages and salary and all those other examples.
- 12 This element, on the other hand, just talks about
- 13 where the money was housed. And the reason why it's here is
- 14 because the statute intentionally contemplates no tracing.
- 15 That was one of the reasons why the statute was enacted in the
- 16 first place, was to avoid the tracing requirement that existed
- in I think 641, the theft of government funds statute. This is
- 18 its own statute to avoid the tracing problem.
- 19 So, this element just talks about where the money is
- 20 housed, and it should be very simple. Was it under the care,
- 21 custody and control of CASI, the corporate entity, which it
- 22 was.
- 23 THE COURT: I think we should say in that middle
- 24 paragraph, "The government must prove beyond a reasonable doubt
- 25 that the defendant acted intentionally in misapplying grant

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- 1 money." I think that's more consistent with what was said
- before, and it might be misinterpreted by the jury if we left
- 3 it as CASI's money.
- 4 MR. KWOK: That's satisfactory to the government.
- 5 MR. RUBINSTEIN: That's satisfactory to the defense,
- 6 your Honor.
- 7 THE COURT: And this one is a separate point. This
- 8 one is that they have to find that the grant money was under
- 9 CASI's control, that the grant money was under CASI's control.
- 10 And it seems to me -- it says "misapplied grant money under the
- 11 control of CASI," and then "The fourth element the government
- 12 must prove beyond a reasonable doubt is that the money that was
- intentionally misapplied was in the care and custody or control
- 14 of CASI."
- 15 If you want me to say "the grant money" --
- MR. RUBINSTEIN: Yes.
- 17 THE COURT: -- I will. "Although the words care,
- 18 custody and control have slightly different meanings, for the
- 19 purpose of this element they express a similar idea. All that
- 20 is necessary is that CASI had control over and responsibility
- 21 for the property." For the property. "For the money". I will
- 22 strike "property".
- 23 MR. RUBINSTEIN: Judge, can you read the whole thing?
- 24 THE COURT: Which element would you like me to read?
- 25 MR. RUBINSTEIN: The fourth element.

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- 1 THE COURT: Sure. Fourth element: Misapplied grant
- 2 money under the control of CASI. "The fourth element the
- 3 government must prove beyond a reasonable doubt is that the
- 4 grant money that was intentionally misapplied was in the care,
- 5 custody or control of CASI. Although the words care, custody
- 6 and control have slightly different meanings, for the purposes
- 7 of this element they express a similar idea. All that is
- 8 necessary is that CASI had control over and responsibility for
- 9 the money."
- For the grant money?
- MR. RUBINSTEIN: Yes.
- 12 THE COURT: All right.
- 13 The fifth element, the third paragraph, this should be
- 14 changed. There is no allegation of stealing, so I would change
- it so it reads, "You may aggregate or add up the value of
- 16 property obtained" -- or misapplied. Misapplied might be
- 17 better -- "misapplied from a series of acts by the defendant to
- 18 meet this \$5,000 requirement, so long as you find that each act
- 19 of misapplication was part of a single scheme by the defendant
- 20 to misapply money under the care, custody and control of CASI."
- 21 Then it goes on. We're changing the third line "federal
- 22 benefits" to "federal grant". And in the last line I changed
- "benefits" to "grant".
- 24 And on the very last line on page 23 of that section I
- 25 would strike "embezzled or stolen" and say "misapplied". So it

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- 1 reads, "The government need not trace the \$5,000." I may
- 2 change that language --
- 3 MR. RUBINSTEIN: Judge, I --
- 4 THE COURT: -- "alleged to be misapplied back to the
- 5 federal grant provided." Back to the federal grant. I would
- 6 strike "provided by the government" because the government is
- 7 the prosecution. It's referred to as the prosecution in the
- 8 beginning of the sentence, and if you put it at the end of the
- 9 sentence too I think it is possibly confusing to the jury
- 10 because of the way it reads.
- 11 MR. EVERDELL: We don't want it to be thought that we
- 12 provided to CASI.
- 13 THE COURT: I didn't think you wanted it that way.
- 14 MR. RUBINSTEIN: Your Honor, Judge, you may think I'm
- 15 losing it, but --
- 16 THE COURT: No.
- 17 MR. RUBINSTEIN: -- but I think that the statute
- 18 requires that you use the word "steals".
- 19 THE COURT: What?
- 20 MR. RUBINSTEIN: The statute requires that you use the
- word "steals".
- 22 THE COURT: Steals?
- 23 MR. RUBINSTEIN: The language of the statute. And I
- 24 think that's in --
- THE COURT: I don't want to say steal, because I don't SOUTHERN DISTRICT REPORTERS, P.C.

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1 think steal -- steal implies it was used for his own benefit --

- 2 MR. RUBINSTEIN: Well --
- 3 THE COURT: -- as opposed to being misused, as opposed
- 4 to being -- I mean --
- 5 MR. RUBINSTEIN: I think that misused dilutes the
- 6 intent that a person has to have in order to be quilty. As a
- 7 matter of fact, it's interesting because Mr. Gisendo had
- 8 suggested I make that request, and I told him I thought it
- 9 would dilute what the statute requires, which is that embezzle,
- 10 steal or take --
- 11 THE COURT: Well, I will agree with you to this
- 12 extent. I think it has to say intentionally misapplied.
- 13 MR. KWOK: That's fine with the government. I mean
- our objection is that the statute has many parts, embezzles,
- 15 steals, obtains by fraud, and then it goes on to say
- 16 intentionally misapplied. The latter prong is what the
- 17 government charges. So, I don't think Mr. Rubinstein is at all
- 18 correct when he says the statute requires the word steal. We
- 19 are not charging that part of the statute.
- 20 MR. EVERDELL: In fact the Erlacker case specifically
- 21 recognizes there are five separate prongs to the statute,
- 22 intentionally misapplied being the fifth prong. And this
- 23 requirement of \$5,000 or more applies to each of the five
- 24 prongs, so there is no requirement to say steal here.
- MR. RUBINSTEIN: I think that including the word SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 "intentionally" which the statute has --
- 2 MR. KWOK: That's perfectly fine.
- 3 THE COURT: If I put in "intentionally" doesn't that
- 4 do it?
- 5 MR. RUBINSTEIN: That does it.
- 6 THE COURT: OK. All right. My right hand here says,
- 7 going back to paragraph fifth, to say you may aggregate or add
- 8 up the value of property intentionally misapplied in a series
- 9 of acts by the defendant to meet this \$5,000 requirement, so
- 10 long as you find out that each act of intentional
- 11 misapplication was part of a single scheme.
- 12 I think she has improved it for clarity so there will
- 13 be no mistake about it.
- 14 MR. RUBINSTEIN: Yes, that sounds all right.
- 15 THE COURT: I don't have much else.
- 16 Uncalled witnesses?
- 17 MR. RUBINSTEIN: My only problem, your Honor --
- 18 THE COURT: Well, do you want to go back? We didn't
- 19 go back to the shortened version of having gone through the
- 20 four elements or five elements. We didn't go back to the
- 21 shortened sort of synopsis or whatever you want to call it.
- 22 MR. RUBINSTEIN: Right. My problem is that if the
- 23 jury -- I agree with your Honor that the actual elements
- 24 describe in full -- lay it out. But if the jury focuses -- and
- 25 this is not a situation -- because your Honor gives the

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- 1 indictment to the jury, and it's not a situation where the jury
- 2 comes back and you reinstruct them. So, I'm concerned that
- 3 sometimes, because the short version is much easier for people
- 4 to focus on, that I just am concerned that we should have some
- 5 more neutral language.
- 6 THE COURT: Well, I read the indictment to the jury,
- 7 and I also give them the indictment, and I also give them a
- 8 copy of the charge.
- 9 MR. RUBINSTEIN: I know that, Judge, but I'm saying
- 10 that's why we should incorporate some of the language that you
- 11 have in the broader version. Not the whole thing obviously.
- 12 THE COURT: Well, I thought --
- 13 MR. RUBINSTEIN: Particularly, your Honor --
- 14 THE COURT: You will see that each one of them
- 15 "intentionally" is emphasized.
- 16 MR. RUBINSTEIN: Well, the only thing I'm asking your
- 17 Honor to include is that in the fourth, on page 19 --
- THE COURT: Page 19.
- 19 MR. RUBINSTEIN: "the misapplied money "--
- 20 THE COURT: -- "was under the care, custody and
- 21 control of CASI."
- 22 MR. RUBINSTEIN: No. The misapplied ATP money, grant
- 23 money --
- 24 THE COURT: All right. You've got a point.
- I put in "grant money" after "misapplied. "Misapplied SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 grant money" in each case. Do you want that?
- 2 MR. RUBINSTEIN: Yes.
- 3 THE COURT: Good.
- 4 MR. RUBINSTEIN: "Misapplied grant money was under the
- 5 care, custody or control of CASI."
- 6 THE COURT: All right. I will read them back now. I
- 7 will read third, fourth and fifth back. Let's strike "federal
- 8 benefits" in second and just say "a federal grant in excess of
- 9 \$10,000". Is that all right?
- 10 MR. RUBINSTEIN: Yes.
- MR. KWOK: Yes.
- 12 THE COURT: And then the third will read, "During that
- one year period, the defendant without authority intentionally
- misapplied grant money." Or should it be "the grant money"?
- 15 MR. RUBINSTEIN: I guess so. I guess it should be
- 16 "the grant money".
- 17 THE COURT: Then the next would be be, fourth, "The
- 18 misapplied grant money was under the care, custody and control
- 19 of CASI." Fifth, "The value of the grant money intentionally
- 20 misapplied by the defendant was at least \$5,000."
- MR. RUBINSTEIN: That's acceptable.
- THE COURT: OK?
- MR. RUBINSTEIN: Yes, your Honor.
- MR. EVERDELL: Your Honor, the only thing I just want
- to be clear for the record is that we all understand that there

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- 1 is no tracing requirement for the statute, and defense counsel
- 2 intends to argue that we have to trace each bill, because I
- 3 believe he is alleging the defendant contributed in some way to
- 4 the pot of money with his own funds and that we can't tie up
- 5 certain purchases to actual grant money as opposed to the money
- 6 he may have put in himself, even though he took out much more.
- 7 That is inappropriate because that's not what the statute
- 8 requires.
- 9 And the only fear the government has with including
- 10 all of this specifically tied grant money is that it's going to
- 11 suggest to the jury that we have to tie it up, which is not the
- 12 case. It's simply the case we have to show the grant money was
- deposited in CASI and it was intentionally misapplied without
- 14 authority, as the statute says.
- 15 THE COURT: Is the language in the charge sufficient
- 16 for your purposes to show that it's not necessary to trace the
- 17 money? If you've got some suggestions there, I will listen to
- 18 them.
- MR. EVERDELL: One moment, your Honor.
- THE COURT: What?
- MR. KWOK: One moment, your Honor.
- MR. EVERDELL: Just one moment.
- THE COURT: Sure.
- MR. EVERDELL: Your Honor, we have been talking about
- 25 this. It's a little hard to incorporate this concept into this SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 language. I just note it for the record because I am putting
- defense counsel on notice that if he intends to argue about
- 3 this in his closing --
- 4 THE COURT: Do you want something about fungible? I
- 5 mean money is fungible.
- 6 MR. EVERDELL: Correct, your Honor.
- 7 THE COURT: I've forgotten in what cases, but I have
- 8 given instructions in connection with the fact that money is
- 9 fungible and not traceable.
- 10 MR. EVERDELL: All right. We could say something like
- 11 the value of the money intentionally misappled by defendant was
- 12 at least \$5,000.
- THE COURT: Where are you?
- 14 MR. EVERDELL: I'm looking at the fifth element.
- MR. RUBINSTEIN: Page, please?
- 16 MR. EVERDELL: Page 19. "The value of the money
- intentionally misapplied by the defendant was at least \$5,000
- 18 but need not be traceable to the federal grant," or something
- 19 like that.
- 20 THE COURT: Where do you want this?
- 21 MR. EVERDELL: I was looking at the fifth element on
- 22 19.
- THE COURT: I see the final element.
- I see. You're looking at page 19.
- MR. EVERDELL: Yes, your Honor.

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- THE COURT: What would you like to get there?
- 2 MR. EVERDELL: I'm suggesting for the fifth element on
- 3 19, something to the effect of, "Fifth, the value of the money
- 4 intentionally misapplied by defendant was at least \$5,000 but
- 5 need not be traceable back to the federal grant."
- 6 MR. RUBINSTEIN: It has to be grant money.
- 7 THE COURT: I have a problem. I began thinking of
- 8 this whole thing as to whether traceable is the right --
- 9 MR. RUBINSTEIN: Judge --
- 10 THE COURT: -- word.
- 11 MR. RUBINSTEIN: Judge, they have no concern, because
- 12 I'm not going to argue it. I'm not going to argue tracing of
- 13 funds and what have you.
- 14 THE COURT: Well, I would like it to be right anyway,
- 15 because juries are imaginative. They are very good, juries,
- 16 and they work hard, and they take their duties very seriously.
- 17 So, I don't want to have something in the charge that we think
- 18 we might have to deal with in a note. If possible, it's good
- 19 to anticipate these things so we don't have notes.
- 20 MR. KWOK: Well, if I may, your Honor, I think Mr.
- 21 Everdell's suggestion is a good one, especially because we
- 22 added the word "grant" to money in all of the short versions of
- 23 the charge on page 19, and so I think to balance it out, to
- 24 make things even handed --
- 25 THE COURT: I see that. I don't have any problem with SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 what he is trying to do. I am merely trying to think of the
- best way to accomplish what he says in a way that isn't
- 3 confusing to the jury. That's what I'm worried about, is the
- 4 confusing nature. Because you get into it later. I think
- 5 maybe it would be better to deal with it in the element rather
- 6 than under the shortened version.
- 7 MR. EVERDELL: Your Honor, I think in all fairness for
- 8 it to be balanced, I think --
- 9 THE COURT: You mean you want me to leave out "grant
- 10 money" in the fifth?
- 11 MR. EVERDELL: If we're going to do the short versions
- 12 on page 19, I think the concept your Honor is trying to get at
- 13 with "intentionally misapplied" is sufficient, and then leaving
- out "the grant money". So, for the third element, for
- 15 example --
- 16 THE COURT: Because it is -- the fourth says it's got
- 17 to be -- the third and fourth --
- 18 MR. RUBINSTEIN: Judge, you have that language. The
- 19 traceable language is on page 22. They have that in the charge
- 20 already.
- 21 THE COURT: I know, but I think what they are looking
- 22 at is in the short version. And when you get to the fifth
- 23 element, that if you add in grant there it suggests that the
- 24 money might have to be traced.
- MR. RUBINSTEIN: I don't have a problem with taking SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 out the word "grant".
- 2 MR. EVERDELL: From all of the short elements?
- 3 MR. RUBINSTEIN: No, just element five, as to element
- 4 five.
- 5 THE COURT: Just in the fifth element.
- 6 MR. RUBINSTEIN: Just talking about the fifth element.
- 7 THE COURT: Just the fifth element.
- 8 Is there any change you want on 21, Mr. Everdell?
- 9 MR. EVERDELL: One second, your Honor.
- 10 THE COURT: Wait a minute. It's not page 21. It's
- 11 page 22.
- 12 MR. EVERDELL: I think the fifth element, the longer
- investigation of it, from 22 to 23, was OK as it was last read,
- 14 as it was last amended.
- THE COURT: All right.
- 16 MR. EVERDELL: My concern is still though on page 19,
- 17 the short elements. We keep including, for example, the third
- and the fourth the word "grant". So, for example, third
- 19 element, "During that one year period the defendant without
- 20 authority intentionally misapplied the grant money. Fourth:
- 21 The misappled grant money was under the care" --
- 22 THE COURT: Yes, we added in on all those elements
- 23 just now.
- 24 MR. EVERDELL: Yes. But I think it's a little
- unbalanced now, because that is starting to suggest I believe

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- 1 to the jury that there is a tracing requirement for this money,
- 2 that it all has to be the grant money, that there has to be
- 3 proof that all of these expenditures were made with specific
- 4 grant money as opposed to it was part of a pot where other
- 5 money might have been commingled at certain times but that's
- 6 irrelevant to the jury's consideration because it doesn't have
- 7 to be specific.
- 8 THE COURT: Well, we all agree that it's got to be
- 9 money --
- 10 MR. RUBINSTEIN: And that's what element five is for.
- 11 THE COURT: The fungibility is what the problem is,
- 12 isn't it?
- 13 MR. EVERDELL: Yes, your Honor, that's correct, the
- 14 fungibility, the fact that --
- THE COURT: -- that it does --
- 16 MR. EVERDELL: And at least as defendant has brought
- 17 up in trial several times -- and I assume he will argue in some
- 18 way on closing, that there was an infusion of \$37,000 by the
- 19 defendant of his own personal loans to the company. Of course
- 20 we argue that's offset by the amount of loans that he took out,
- 21 so there wasn't really an additional source of funding. And
- even so, \$37,000 pales in comparison to the amount of money
- that was received by the grant.
- 24 But we just want to be sure that nothing in this
- 25 language is going to suggest to the jury that for any

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- 1 particular purchase or expense that we raise, that we have to
- 2 prove that that expense is traced specifically to ATP funds,
- 3 because that's assuming a burden that we don't have to under
- 4 the statute.
- 5 And I think that if we keep saying "intentionally
- 6 misapplied the grant money," at least in the short forms, it
- 7 might suggest to the jury that they have to conclude that
- 8 each --
- 9 MR. RUBINSTEIN: Well, those are those elements.
- 10 THE COURT: Let's think about -- I don't know what
- 11 your summations are going to be, but in the last few letters
- 12 that I have received I got the impression that the government
- is going to argue that the defendant's expenditures violated
- 14 the terms of the grant --
- 15 MR. EVERDELL: That's correct, your Honor.
- 16 THE COURT: And to violate the terms of the grant that
- would have to mean that grant money was misapplied. Because
- 18 let's allege that the defendant had \$100,000 in the bank and in
- 19 CASI's account, and he paid the rent with his \$100,000. That
- 20 was in the existing -- in the bank. That would not be a
- 21 violation of the law.
- MR. EVERDELL: He used his own funds to pay off --
- 23 THE COURT: Or used CASI's funds, preexisting funds.
- 24 MR. EVERDELL: Right. No, that's correct, your Honor.
- 25 MR. KWOK: If I may, your Honor. I still think on

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- 1 balance --
- 2 THE COURT: So, you have to distinguish somehow
- 3 between CASI's preexisting funds and the grant funds.
- 4 MR. EVERDELL: True, although there is no evidence in
- 5 the record that there was any preexisting funds. I mean all
- 6 evidence to the contrary, was that the grant funds --
- 7 THE COURT: The stated evidence is that there aren't
- 8 any.
- 9 MR. EVERDELL: That's right, your Honor.
- 10 THE COURT: Weren't any.
- 11 MR. KWOK: Just to address my comments specifically to
- 12 --
- 13 THE COURT: There is circumstantial evidence that
- 14 there wasn't any because of the immediate expenditures for past
- 15 due bills.
- 16 MR. EVERDELL: Sorry? I didn't follow, your Honor.
- 17 THE COURT: There is circumstantial evidence that
- 18 there wasn't any because of immediate expenditure of monies
- 19 that were long past due.
- 20 MR. EVERDELL: Yes. And there was specific testimony
- 21 by both business managers that the ATP funds were the only
- 22 funds they ever saw coming into the company, and there is also
- 23 Ms. Riley's analysis which shows exactly what funds went into
- 24 the CASI bank accounts over the time period we are talking
- about, year one and year two of the grant, none of which -- and

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- 1 that includes the \$37,000 that the defendant said he made as an
- 2 emergency loan. That's taken into account.
- There is simply nothing else, with the exception of I
- 4 think she mentioned about \$1500 worth of refund checks or
- 5 something in the second year which forms that little slice of
- 6 the pie in year two of the grant.
- 7 THE COURT: I don't remember what the balance was in
- 8 the beginning in the account, however. But what I'm saying is
- 9 that I think you have to show that there was a misapplication
- 10 of grant money, otherwise he doesn't need authority, otherwise
- 11 he doesn't misapply money.
- MR. KWOK: Your Honor, I think --
- 13 THE COURT: How do you misapply if it was not grant
- money?
- 15 MR. KWOK: I think that's right, your Honor. My only
- 16 point is I just share defense counsel's concern that he
- 17 mentioned a moment ago, that the short version also needs to be
- 18 accurate, not just the long version.
- 19 THE COURT: I agree with you.
- 20 MR. KWOK: And so if we were to add the word "grant"
- in front of every one of the elements, the third, the fourth
- 22 and the fifth --
- THE COURT: The fifth has been -- Mr. --
- 24 MR. RUBINSTEIN: I agreed to take out the "grant" on
- the fifth element for that reason, because of the tracing, so I

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1	thought that it would be	balanced to take the word "grant" out
2	of the fifth element. So	o, on that element they have the
3	tracing provision that yo	ou have in your language on pages I
4	believe 22 and 23.	
5	MR. KWOK: But,	your Honor, realistically I don't
6	think any juror will be a	ble to pick up on the significance of
7	the absence of the word "	grant" in the fifth element which it
8	has just been mentioned i	n the third and the fourth element in
9	the short version.	
10	So, the governme	ent would just ask you to amend or to
11	add to the end of the fif	th element in the short version
12	something along the lines	s of what Mr. Everdell just suggested,
13	that "at least \$5,000, wh	aich needs not be traceable back to the
14	federal grant". I think	that would do it.
15	(Continued on ne	ext page)
16		
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- 1 MR. RUBINSTEIN: I don't think that's appropriate, and
- 2 I don't think that's the language that --
- 3 THE COURT: It's unusual to have that kind of a
- 4 statement in the elements.
- 5 I think my feeling would be what we ought to do is
- 6 have a section on traceability, something about fungibility. I
- 7 can't think what kind of a case I might have a charge on that.
- 8 MR. RUBINSTEIN: Your Honor, in their request, the
- 9 general instructions, they don't -- they merely ask, on page
- 10 four of their request, the value of the intentionally
- 11 misapplied money was at least \$5,000.
- 12 MR. EVERDELL: Yes, but now we've amended the other
- things and we're --
- 14 THE COURT: I know.
- 15 MR. EVERDELL: -- we're trying to make sure it's
- 16 balanced.
- 17 THE COURT: Well, we could do something like this --
- 18 MR. RUBINSTEIN: You know, Judge, I --
- 19 THE COURT: Let me make a suggestion.
- MR. RUBINSTEIN: I'm sorry.
- 21 THE COURT: -- before, and then I'll hear yours.
- 22 We can do something -- now each of these elements
- 23 have -- need further description, so listen closely as I
- 24 explain the requirements as to each of these elements, and then
- 25 include the tracing element in the fifth or the end of the

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- 1 fifth element.
- 2 MR. RUBINSTEIN: You know, Judge --
- 3 THE COURT: But I think it ought to be expanded a
- 4 little to show that because the fungibility issue need not
- 5 trace.
- 6 MR. RUBINSTEIN: I think that that tracing really
- 7 applies more in the bribery section than to 666 section. I'm
- 8 not really 100 percent confident -- I'm not exactly comfortable
- 9 with the tracing on this kind of case. It really -- there's a
- 10 difference between the misappropriation and the bribery portion
- 11 of 666.
- 12 MR. EVERDELL: Your Honor, I think that was resolved
- 13 by the Sabri case in the Supreme Court, which I believe
- 14 applied, didn't specifically apply to the bribery context. It
- 15 said there's simply no nexus requirements for the funds in 666
- 16 cases. So I don't think that that's correct.
- 17 So, if I could just talk to Mr. Kwok.
- 18 (Pause)
- 19 MR. EVERDELL: Your Honor, I think -- you know, if the
- 20 Court is inclined to leave the short form of the elements on
- 21 page 19 as is, then we would welcome the additional language
- 22 that you suggested about needing further explication, but also
- 23 to include in the element that we're talking about fifth
- 24 element. A more expansive discussion of fungibility, I don't
- 25 have a particular charge I can offer you, but if you have

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- 1 something in the past --
- THE COURT: Your appellate group ought to have one.
- 3 MR. EVERDELL: That's possible, your Honor.
- 4 THE COURT: I'd call them.
- 5 MR. RUBINSTEIN: Judge, if you -- the language in
- 6 Sabri says --
- 7 THE COURT: Which, in what, sir?
- 8 MR. RUBINSTEIN: In Sabri, the language said that it
- 9 is true, Justice Sabri says, that not every bribe or kickback
- offered or paid to an agent of government covered by 666(b)
- 11 will be traceably skimmed from specific federal payments.
- MR. EVERDELL: Your Honor, my understanding of Sabri
- is it's not limited to the bribery context. It talks about the
- 14 purposes of the statute and the fact take it was passed to fill
- 15 gaps in existing statutes.
- 16 The purpose of the statute is to make sure that the
- 17 recipients of federal funds were proper recipients and proper
- 18 stewards of the federal money. So it was related not to the
- 19 money in particular, there were no traceability requirements,
- 20 but simply that the person or entity that received the money
- 21 was a good steward of that money, and that he didn't have to
- 22 show particular traceability. Because the prior existing
- 23 statutes, if the money got commingled enough, you couldn't use
- 24 the statute to prosecute the case. So this was specifically
- 25 passed in order to avoid that problem, and it applies to, as I

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- 1 understand it, to every single prong of the statute.
- 2 MR. RUBINSTEIN: Well, how do you trace your own
- 3 money, your Honor?
- 4 THE COURT: What?
- 5 MR. RUBINSTEIN: The problem is that unlike where you
- 6 get illegal money -- I can understand you don't get -- you get
- 7 illegal money, you accept the bribe. Now what difference does
- 8 it make if you spent the money that you got as a bribe or you
- 9 spent -- you have a \$100 in a bribe and you have \$100 that you
- 10 got in your salary, so now you have \$200. What difference does
- 11 it make which monies you spent at that point? I understand why
- 12 there's no tracing requirement. But if you have legitimate
- money, you start out with legitimate money -- the grant money
- is legitimate; why should there be any, under these
- 15 circumstances, tracing? I don't think that the courts have
- 16 gone that far. There's something --to me there's something
- 17 wrong with the idea that if I spent --
- 18 THE COURT: The point is once you put it in a bank
- 19 account, anything else in the bank account, or you can't -- you
- 20 can't trace it, because money is fungible.
- 21 MR. RUBINSTEIN: Right. But I'm saying that that's
- 22 because the money, the bribe money is bad money. Here the
- grant money is good money, and so therefore it's a different
- 24 concept. If he is spending the good money wrongfully, he's
- 25 spending the good money -- what they're saying, their

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- 1 argument --
- 2 THE COURT: Stop and think a second, the federal money
- 3 isn't given for bribes.
- 4 MR. RUBINSTEIN: Right.
- 5 THE COURT: So it's not bad money when it's received.
- 6 MR. RUBINSTEIN: No, I'm saying it's not bad money.
- 7 I'm saying that's right. In this instance, the money received
- 8 is good money, as opposed to a bribery situation where the
- 9 money you're receiving is bad money.
- 10 THE COURT: Money you received -- the bribery part of
- 11 666 applies to money that was received as good money and spent
- as bad money, and it's all spent from the same pot.
- 13 MR. RUBINSTEIN: I disagree with your Honor. The
- 14 bribe money, I submit, is the bad money, that pollutes the good
- 15 money. And you can't argue that, gee, I took this bribe, but I
- 16 spent my good money and I kept the bribe money separate. That
- is what I think is the context of this argument. Because there
- is a difference between the bribery portion of the 666 --
- 19 THE COURT: Well, it presupposes an intent, an intent
- 20 to bribe before you receive the funds. Generally, in those
- 21 cases the bribe is made subsequent to receipt of funds.
- 22 I think you better call and see if you haven't got
- 23 something on fungibility tracing over there as to charge.
- MR. KWOK: We will do that.
- THE COURT: I can't think of a case just because

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- 1 I'm --what about the money laundering cases? Mr. Kwok, money
- laundering cases, ask them about money laundering cases.
- 3 MR. KWOK: Certainly.
- 4 MR. RUBINSTEIN: I don't to get ahead of myself. I
- 5 still haven't made my Rule 29 motion, which would make all of
- 6 this academic. I will wait for the government.
- 7 THE COURT: You better wait till the government comes
- 8 back.
- 9 MR. RUBINSTEIN: To return.
- 10 (Recess)
- 11 (In open court)
- MR. RUBINSTEIN: Your Honor, my let me say that Sabir
- 13 relates to a violation of Section 666(a)(2), which involves the
- 14 bribery portion.
- 15 THE COURT: I'll look at it. Let's finish the charge
- 16 and come back to this.
- 17 MR. RUBINSTEIN: Okay.
- MR. KWOK: I think that's --
- 19 THE COURT: Then I'll hear your Rule 29 if we don't
- 20 have anything and -- go ahead.
- 21 After -- is there any need for uncalled witnesses
- 22 or --
- MR. RUBINSTEIN: Yes, your Honor.
- MR. KWOK: Yes, your Honor.
- 25 THE COURT: Okay, then leave that in.

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- 1 MR. RUBINSTEIN: Your Honor, I notice it's the
- 2 standard language on the uncalled witnesses. But in this case
- 3 where the gravamen of the Government's case is Miss Hayes, I
- 4 just feel that --
- 5 THE COURT: Have you got a suggestion?
- 6 MR. RUBINSTEIN: Pardon?
- 7 THE COURT: What's your suggestion?
- 8 MR. RUBINSTEIN: Well, that the, although -- well, the
- 9 government has the ability to confer immunity on a witness and
- 10 to enter into agreements with the non-prosecution agreements
- 11 with the witness. And the defense, who has the same right to
- 12 call the witness, doesn't have those tools available.
- 13 THE COURT: But that doesn't have to do with calling a
- 14 witness. There's no allegation here that immunity has been
- 15 granted or --
- 16 MR. RUBINSTEIN: No. I'm saying that they have that
- 17 ability. You know, the language is both the government and the
- 18 defense have the same power to subpoena a witness to testify.
- 19 THE COURT: I'll have to see your request to charge
- 20 from you along that. That's a different issue and I'd have to
- 21 see your case and the authority for it.
- 22 MR. RUBINSTEIN: I'm hoping to make authority here,
- Judge.
- 24 THE COURT: Well, then you'll have to give me specific
- 25 language and I'll have to consider it based on the language.

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- 1 What about particular investigative techniques, you
- 2 want that?
- 3 MR. RUBINSTEIN: Never happy --
- 4 THE COURT: What?
- 5 MR. RUBINSTEIN: I'm never happy with that, but it's
- 6 standard language in the federal courts.
- 7 THE COURT: All right. Is the character all right?
- 8 MR. RUBINSTEIN: Character is fine, your Honor.
- 9 THE COURT: Charts and summaries all right?
- MR. KWOK: Yes.
- MR. RUBINSTEIN: Yes, your Honor.
- 12 THE COURT: Like that? See the exhibits, hear
- 13 testimony, communications with the Court?
- MR. RUBINSTEIN: That's fine, your Honor.
- 15 THE COURT: Submitting the indictment, need for
- 16 unanimity, verdict form. We got a verdict form?
- MR. RUBINSTEIN: Yes. I've approved the verdict form
- 18 that --
- 19 THE COURT: You have, all right.
- Then I guess any thoughts about the, any problems with
- juror number one being the chair person?
- MR. KWOK: No, your Honor.
- MR. RUBINSTEIN: No problem, your Honor.
- 24 THE COURT: All right. Are we all through with the
- 25 charge then, with the exception of our problem on --

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- 1 MR. KWOK: Your Honor, if I may make a suggestion. I
- think for purposes of this case, it's really not necessary to
- 3 get into the nuance of the law about traceability, because as
- 4 the government contends at the end of the day it's one big pot
- 5 and there's really no other source of funding for CASI, other
- 6 than the ATP money. So if Mr. Rubinstein is fine leaving in
- 7 what is in the long version for the fifth element on pages 22
- 8 and 23, the government would have no problem leaving in the
- 9 short version, with the slight amendments that we just made
- inserting the word grant in front of the third and fourth
- 11 element on page 19, just to avoid an extended discussion about
- 12 something that is really not --
- 13 THE COURT: All right, that is simple, I guess.
- 14 MR. RUBINSTEIN: No -- well, no. I mean, it's
- 15 classical, they want their cake and eat it.
- 16 THE COURT: Well, they want --
- 17 MR. RUBINSTEIN: They want me to abandon it.
- 18 THE COURT: You agreed that there's no --
- 19 MR. EVERDELL: We're agreeing to what you agreed to.
- 20 THE COURT: Traceability, they're entitled to
- 21 traceability.
- 22 MR. KWOK: And Mr. Rubinstein just argued that he
- 23 didn't intend to argue it.
- MR. RUBINSTEIN: Judge, that's what I said, I
- 25 reconsidered it in rereading.

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- 1 THE COURT: All right. We'll get -- till we get
- 2 something from the their group, I'm trying to think of the case
- 3 that I had this problem in, and I think it would be -- there is
- 4 a better charge that goes into fungibility and, therefore, the
- 5 fact that you don't need to trace funds to show that they were
- 6 the actual funds that the government used.
- 7 MR. RUBINSTEIN: But I think there has to be a
- 8 distinction between a case that is charged under 666(a)(2), as
- 9 opposed to -- you look at the statute, (a)(2) relates to
- 10 corruptly gives -- officer agrees to give anything of value
- 11 person with intent to influence or reward. So I understand
- 12 why -- that was what my argument was about good money and bad
- money, why there shouldn't be a traceability, if you give
- 14 somebody a bribe and that's the money that you're talking about
- using.
- 16 But here we're not talking about (a)(2) money. We're
- 17 talking -- we're not talking about (a)(2). So the courts have
- 18 never addressed whether or not there's traceability. And
- 19 there's nothing -- as I said, the bribe money is difficult to
- 20 trace because it's fungible.
- 21 Here we're not talking about bribe money. We're
- 22 talking about grant money, which you can trace. And I'm not
- asking for a charge that says that they have to trace the
- 24 money. I'm just saying that it's misleading to suggest that
- 25 they can't consider -- the jury can't consider which monies it

- 1 was.
- 2 MR. EVERDELL: That's ridiculous, your Honor.
- 3 MR. RUBINSTEIN: The Government's argument, as Mr.
- 4 Kwok said, is that there is no tracing problem because there's
- 5 only one pot; all that money comes from one source, that being
- 6 the grant. Therefore, any monies spent are grant money. So I
- 7 don't know why they would want -- why they need any sort of
- 8 tracing language in the charge at all.
- 9 MR. EVERDELL: Because that's case law, your Honor,
- 10 and that is the case in every Circuit. The cases talk about
- 11 and in Sand as well, by enacting -- this is the ninth Circuit
- 12 case Stevens, by enacting Section 666, the general statute, not
- any particular subsection, Congress plainly decided to protect
- 14 federal funds by preserving the integrity the entities that
- 15 received the federal funds rather than requiring the tracing of
- 16 federal funds to a particular illegal transaction.
- 17 So this is not -- this applies to the entire statute.
- 18 Now, the fact that we may not have a particular issue in this
- 19 case, because of the funds were ATP funds, doesn't matter. The
- 20 jury should still be instructed on the appropriate law, which
- 21 is that there is no tracing requirement with this statute. And
- 22 the statute was specifically enacted to avoid commingling
- 23 problem that other statutes presented.
- 24 MR. KWOK: And, your Honor, if I may, I mean the
- 25 charge we cite in our request to charge, and that's now

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- 1 reflected in the long version of the fifth element is directly
- 2 lifted from Sand, the model jury instructions. It's not lifted
- 3 from (a)(2). It's lifted from the statute that we charge. So
- 4 I don't know what Mr. Rubinstein's talking about when he refers
- 5 to his on the spot research.
- 6 (Pause)
- 7 MR. RUBINSTEIN: Judge, I'd only point out --
- 8 THE COURT: I'll have to think about it, Mr -- I'll
- 9 have to think about it.
- 10 MR. RUBINSTEIN: Judge, there is another case --
- 11 THE COURT: Your point, as I see it, is that, okay,
- 12 it's true that Sand says that, but that applies to an
- 13 embezzlement case, but it may not apply to misapplication case.
- MR. RUBINSTEIN: And I would suggest --
- 15 THE COURT: It seems to be taken from Solantz, which
- is an embezzlement case, so let me look at it and see if can --
- 17 MR. RUBINSTEIN: Judge, I hope that this case that I'm
- 18 going to mention to the Court.
- 19 THE COURT: -- satisfy myself that there's nothing to
- 20 your point, but I'll have to -- I'll have to look at it.
- MR. RUBINSTEIN: Judge --
- 22 THE COURT: You've got a Rule 29 motion.
- 23 MR. RUBINSTEIN: Yes. I just wanted to add an
- 24 additional case that I hope is helpful to the Court, and it's
- 25 the Second circuit case, it's U.S. versus Thompson, and it's

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- 1 cited at 484 Fed. 3d, it's 877. And I just -- it's not on all
- fours, but I think it gives the sense of what we're talking
- 3 about here. So I know your Honor will take a, more than just a
- 4 casual look at it.
- 5 MR. EVERDELL: Your Honor --
- 6 MR. RUBINSTEIN: As far as -- I'm sorry.
- 7 MR. EVERDELL: And, your Honor, if I could also direct
- 8 your attention to the cases in, of our letter in particularly
- 9 United States V. Neiman, 211 F.3d 40, which I haven't looked at
- 10 it recently, but although when I wrote the letter, but I seemed
- 11 to recall that was an (a)(1)(a) case and had some language
- 12 about traceability, Second Circuit case.
- 13 THE COURT: My -- it's a not-for-profit part that is
- 14 what I'm -- the not-for-profit agency as opposed to -- CASI
- 15 would --
- MR. KWOK: It is a profit.
- MR. RUBINSTEIN: For profit.
- 18 THE COURT: For profit.
- 19 MR. RUBINSTEIN: CASI was a for profit.
- 20 THE COURT: Well, the application to a for profit
- 21 organization controlled by the defendant is what is different
- than an embezzlement situation and, therefore, I want to just,
- 23 if there are any cases on that, I'd be interested.
- 24 MR. EVERDELL: Your Honor, I think --
- THE COURT: You seem to have a different legal

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- 1 structure that you're examining in the context of the statute.
- 2 MR. EVERDELL: Yes, your Honor. I think that the
- 3 Nieman case may be instructive. If I recall it, I think it
- 4 involves an organization that received funds and that were
- 5 misapplied elsewhere and there wasn't the only source of
- 6 funding that the --
- 7 THE COURT: That's where we want.
- 8 MR. EVERDELL: Yeah.
- 9 MR. RUBINSTEIN: Judge, would you hear me on Rule 29,
- 10 your Honor?
- 11 THE COURT: Yes, sir, right away.
- MR. RUBINSTEIN: Thank you.
- 13 I think, your Honor, after you've heard all the
- 14 evidence here, I think it's clear that Dr. Karron had no intent
- 15 to spend grant monies inappropriately. The system in place
- 16 permitted review of all expenditures; not only permitted it, it
- 17 actually encouraged it. And the testimony is clear that when
- 18 the government is trying to try this case, you had a budget and
- 19 the budget is your Bible. When, in fact, in science, ATP
- 20 knows, and everybody, any reasonable person knows that as you
- 21 start -- as you work on the project, you realize you have
- 22 different priorities, so that that's why you have to write to
- 23 change the budget around to do it without any approval
- 24 whatsoever of the 10 percent, which is really 20 percent
- 25 because it's down and up, as Mr. Benedict said. And that is

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- 1 why you have a right to revise the budget after the first year.
- 2 You could go back and change it all. And so when you have that
- 3 in mind, and you understand that, and this is stuff that you
- 4 could negotiate. And even we have evidence that money is
- 5 carried forward to the next year on occasion, it tells the
- 6 recipient one thing; as long as you're using the money to
- 7 advance the project, use it and we'll talk about it.
- 8 Even in this case, we even have evidence where nothing
- 9 clearer than utilities, where there's evidence that that's an
- 10 indirect cost, that there was e-mails back and forth with ATP
- 11 suggesting that ATP would absorb the difference in the
- 12 utilities expenditures over what it had been in the past. Why
- 13 else would they be asking for bills to show the difference in
- 14 the expenditure?
- 15 So -- and the CFR says that they judge these things on
- 16 a case-by-case basis. And nowhere -- when you take that,
- together with the fact that there's evidence here that Dr.
- 18 Karron having repairs to his -- having work done, construction
- 19 work done in his home, paid for work done in the kitchen with a
- 20 personal check, work done in the living room with a CASI check,
- 21 that that shows the intent. The fact that the government could
- 22 point to things that might have been a mistake or might have
- 23 been items that a blind bookkeeper would reallocate? Their
- 24 argument is that because he resisted, Dr. K resisted the
- opinions of people like Benedict and Springs, and maybe even

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- 1 Hayes, that, therefore, he misappropriated funds.
- I submit to your Honor that that doesn't show
- 3 intention at all. As a matter of fact, the conversations were
- 4 from Benedict; well, if I owe them money, I have a rich mother,
- 5 I'll pay them back.
- 6 So that all goes to the issue of intent, which I think
- 7 that the government has woefully failed to establish in this
- 8 case, without getting into the nitty-gritty about what money
- 9 was spent, where nobody is contesting that there was work done
- 10 on the grant. And so the main areas are rent, which your Honor
- 11 may recall most of the rent was back due rent. So, technically
- 12 speaking, that was not rent attributable to the grant period.
- 13 So, therefore, it shouldn't be considered as a violation of
- 14 taking an indirect amount. Because it was for 2000 and 2001
- pre-grant, most of the money.
- 16 And additionally, the defendant had a right to move
- 17 10 percent increase in salary, which would've moved his salary
- 18 up by \$80,000 to \$255,000, and he could absorb it on that
- 19 level. So that's even without getting approval, to have a
- 20 budget, a budget change.
- 21 So it just seems to me, your Honor, that all the
- 22 evidence here, there is no, no proof that Dr. Karron intended
- 23 to do anything to the contrary. We have receipts. He scanned
- 24 every document. He had back up for every document. You know,
- 25 they opened that he made changes in the computer. But what did

- 1 he change, how you classify an expense? He never changed an
- invoice, he never changed a check. He never looked to delete
- 3 anything. And we have uncontroverted evidence here from the
- 4 Government's own witness that Dr. Karron is an incompetent
- 5 manager. He stands up at the CASI -- at a government meeting
- 6 dealing with grants and says, I need help with financial
- 7 guidance about a grant, all right. Everybody testified that in
- 8 the early part of the grant, Dr. Karron was taking care of the
- 9 books. And what is the -- the indisputed testimony? That the
- 10 books were in horrific conditions when the Jackson Group and
- 11 Springs came aboard, and they had to redo the entire, the
- 12 entire books.
- 13 The one thing that was consistent was that we had
- 14 checks, every check that was written there was an invoice for.
- 15 So I submit to your Honor that there's absolutely no basis to
- 16 consider that Dr. Karron intended to do anything wrong, and
- 17 that their whole theory of this case is misguided.
- 18 THE COURT: Well, the problem is that generally the
- 19 issue of criminal intent is an issue for the jury, and if
- there's any basis for the jury to draw such a conclusion, I've
- 21 got to leave it to the jury.
- 22 Here, the grant was made a few weeks after they
- 23 attended a kickoff meeting. I gather the money came in a few
- 24 weeks after they attended the kickoff meeting, what's called a
- 25 kickoff meeting. And at the kickoff meeting there were certain

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1 exhibits and rules that were laid down to the recipient. And

- the terms, the standard terms and conditions were set forth.
- 3 And they had a slide show to advise the recipients of the
- 4 nature of the agreement so that those people who were less than
- 5 avid of terms of conditions would be alerted to the necessary
- 6 items.
- 7 And as I understood the testimony, that they were
- 8 not -- they were not to spend any money for rent and utilities.
- 9 And I thought that appeared on one of the slides -- and I may
- 10 be wrong. And that then they had to get prior approvals for
- 11 certain types of expenditures.
- 12 Well, the first thing that happens is that the money
- 13 comes in -- I've forgotten whether it was \$150,000 or something
- 14 like that. The defendant takes that check -- takes that money,
- deposits it in CASI, then draws himself a check for 75,000 and
- 16 then proceeds to --
- 17 MR. RUBINSTEIN: Judge --
- 18 THE COURT: -- draw other checks in payment of the
- 19 back rent.
- 20 MR. RUBINSTEIN: Judge, your time line --
- THE COURT: For some, for some \$36,000.
- 22 MR. RUBINSTEIN: The time line is off, Judge.
- THE COURT: What?
- 24 MR. RUBINSTEIN: Your time line is off. The money --
- 25 THE COURT: Time line is off?

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- 1 MR. RUBINSTEIN: Yes. The money came in in October, I
- 2 think October 25th.
- 3 THE COURT: Right.
- 4 MR. RUBINSTEIN: The kickoff and the money was
- 5 withdrawn --
- 6 THE COURT: The kickoff --
- 7 MR. RUBINSTEIN: Was August, was November 8th, 2001.
- 8 So the money was withdrawn prior to the time of the kickoff,
- 9 so --
- 10 THE COURT: Well --
- 11 MR. RUBINSTEIN: That's my recollection --
- 12 THE COURT: I don't know. But --
- MR. RUBINSTEIN: -- of the evidence.
- 14 THE COURT: You may be right. My recollection was
- 15 that the kickoff was in October, but I may be wrong. And I
- 16 notice that the last witness indicated that the kickoff was in
- 17 October where he met Dr. Karron.
- 18 MR. RUBINSTEIN: He wasn't at the kickoff, Judge.
- 19 Benedict was not at the kickoff. He testified that he was
- 20 not -- he was not aboard. He said he was at a conference where
- 21 he met -- that's when he met Dr. Karron.
- 22 THE COURT: Well, I thought he said at one point he
- 23 was at a conference, but then he called it kickoff also. I may
- 24 be wrong.
- 25 MR. RUBINSTEIN: The testimony is that the people at SOUTHERN DISTRICT REPORTERS, P.C.

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- 1 the kickoff, besides the ATP people, were Dr. Karron, Gurfein
- and somebody whose name starts with an S, Dr. Satava.
- 3 THE COURT: Well, the point I'm making is that soon --
- I believe they may have had such a meeting. I'd have to go
- 5 back to my notes and look at it. I will go back to them.
- 6 Exhibit 2 mentions a kickoff. I don't seem to have a date.
- 7 Then I believe that that was all before the money was
- 8 sent, but after the award was announced, and then the money
- 9 comes in and these payments were made out. But I'd have to go
- 10 back to the actual record. There was another meeting in
- 11 November.
- MR. EVERDELL: Your Honor, regardless --
- 13 THE COURT: It was testified to where he discussed
- 14 changes in the equipment budget. Those are just my notes. I
- may be wrong.
- 16 So, I mean they could draw an inference from that, it
- 17 seems to me, that he deliberately decided not to abide by the
- 18 agreement, for reasons of his own, or by the grant terms
- 19 agreements of its own and without getting -- and without
- 20 getting any prior approval, and that's enough for a jury to
- 21 determine that he was acting intentionally and knowingly.
- 22 Let me see if maybe the dates will be in your
- 23 cross-examination.
- MR. KWOK: Your Honor, if I may, I think if I recall
- 25 the testimony correctly, I think Mr. Rubinstein is right, in

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- 1 that the kickoff meeting in this case happened after the funds
- 2 were made available.
- 3 THE COURT: All right.
- 4 MR. KWOK: But in the end it doesn't matter, because I
- 5 think there's testimony also that these conversations about
- 6 rent and utilities happened at the proposers meeting, even
- 7 before the kickoff meeting, Lee Gerfein and Dr. Karron called
- 8 Hope Snowden to talk about rent. And so when Ms. Snowden went
- 9 to the kickoff meeting, the same conversations happened and --
- 10 THE COURT: What about this Ms. Lide, Betti whatever
- 11 her name was, Betti --
- MR. KWOK: Betti Joyce Lide. She also testified that
- 13 she spoke to the defendant and the defendant's business manager
- 14 about the same topic.
- 15 THE COURT: When?
- MR. KWOK: Of rent.
- 17 THE COURT: When?
- 18 MR. KWOK: Rent, exactly correct. When? I believe
- 19 she testified that it was at the end of 2001.
- 20 THE COURT: When?
- 21 MR. EVERDELL: I believe she testified -- I believe
- 22 she testified it was sometime in 2001. I don't know --
- THE COURT: Sometime in 2001?
- MR. EVERDELL: I'd have to check that.
- THE COURT: Before the grant?

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- 1 MR. EVERDELL: Your Honor, the conversations that I
- 2 think are particularly relevant here are the ones with Hope
- 3 Snowden, who testified particularly that even before the grant
- 4 was awarded that she had conversations with the defendant and
- 5 Lee Gerfein about rent and not being allowed allowable, and
- 6 again had conversations with them after the grant was awarded
- 7 and at the kickoff meeting, and all these conversations
- 8 happened before these funds were drawn down, and rents started
- 9 to get paid with funds. So he was on notice.
- 10 THE COURT: It wasn't at the kickoff meeting, but
- 11 there was another meeting, is that your --
- MR. EVERDELL: There is a proposers meeting before the
- 13 kickoff meeting, when people who want to write proposals for
- 14 the CASI grant -- sorry -- for the ATP grant go and they get
- 15 educated on what the rules are, and that happened well before
- 16 the grant was awarded.
- 17 THE COURT: I guess I'm talking about the proposers.
- MR. EVERDELL: I think so.
- 19 MR. RUBINSTEIN: I don't think Snowden was -- my
- 20 recollection Ms. Snowden wasn't at --
- 21 THE COURT: I didn't think.
- MR. RUBINSTEIN: That --
- 23 THE COURT: I don't think she was at it. I thought
- only Lide and some other women were at it.
- 25 MR. EVERDELL: That's right. I don't think -- I don't SOUTHERN DISTRICT REPORTERS, P.C.

- 1 think Ms. Snowden -- well, I don't think there's testimony Ms.
- 2 Snowden was at the proposers meeting, but she had conversations
- 3 with the defendant himself and with doctor --
- 4 THE COURT: No, but those are -- I mean, you can fix
- 5 dates, but you have this problem of acting knowingly and
- 6 intentionally in violation of the grant terms.
- 7 MR. EVERDELL: That's right.
- 8 THE COURT: That's a problem.
- 9 MR. EVERDELL: And the conversation was can we use
- 10 rent -- or can we use ATP funds to pay for rent an. She said
- 11 absolutely not.
- 12 THE COURT: If the horse was already out of the barn,
- it doesn't go to intent.
- MR. EVERDELL: The horse wasn't already out of the
- 15 barn. These conversations happened before the grant funds
- 16 started getting drawn down and before the rent payment were
- 17 getting paid.
- 18 THE COURT: I don't know whether they did or didn't,
- 19 at this point.
- 20 MR. EVERDELL: Her testimony was that it happened
- 21 before the grant was even awarded, and the first drawdown is, I
- 22 believe --
- 23 THE COURT: That was my recollection, but --
- 24 MR. RUBINSTEIN: That can't possibly be, your Honor,
- 25 because they testified that this was -- Snowden particularly --

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- 1 that nobody would know that they had the grant until they
- 2 received official notification and, therefore -- so the
- 3 government is, I submit, is a little -- is inaccurate.
- 4 MR. EVERDELL: It doesn't prevent them from calling.
- 5 THE COURT: I haven't got any citation to the evidence
- 6 before me. No one provided me with that. And --
- 7 MR. EVERDELL: It's also -- your Honor, the testimony
- 8 of Hope Snowden is that she had numerous conversations with the
- 9 defendant and Lee Gerfein remember between the time that the
- 10 grant was awarded and the day of the kickoff meeting about rent
- 11 utilities. The first drawdown funds, I believe, was
- 12 October 26. The grant awarded on 4th of October, backdated
- 13 effective as of October 1st, but she had these conversations
- 14 with the defendant before the fund are even drawn down. And
- 15 plus the fact --
- 16 THE COURT: Where is that in the record?
- 17 MR. EVERDELL: It's 254 to 259 and 303 to 04. And,
- 18 your Honor, adding to that, is that these rent checks --
- 19 THE COURT: I've got to find a date. Where is the
- 20 date?
- 21 MR. EVERDELL: I think it should be on 254 to 259,
- those pages.
- 23 THE COURT: 254?
- MR. EVERDELL: Of the transcript.
- THE COURT: I have the wrong book. I asked for dates.

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- 1 That -- 254 is the day of the kickoff meeting, which is in
- 2 November.
- 3 MR. EVERDELL: And I believe the question was
- 4 something like, do you have any conversations before the
- 5 kickoff meeting with --
- 6 THE COURT: Well, where is that?
- 7 MR. EVERDELL: I think it's in one --
- 8 THE COURT: Wait a minute. I got something prior
- 9 to -- yes, yes. Let me see. 254.
- MR. EVERDELL: Through 259 and 303.
- 11 THE COURT: Just a second let me --
- MR. EVERDELL: Yes, your Honor.
- 13 (Pause)
- 14 THE COURT: It doesn't give a date. It doesn't give a
- 15 date. I can't find any date in there.
- MR. EVERDELL: Your Honor, I don't know if Ms. Snowden
- 17 remembered the exact date when she had the conversations, but
- 18 she said --
- 19 THE COURT: But it doesn't have any date, any
- 20 reference date in that page.
- 21 MR. EVERDELL: Your Honor, I think the timeframe we're
- 22 talking about here --
- 23 THE COURT: Wait a minute, wait a minute. I think I
- 24 may have found one on 257.
- MR. EVERDELL: Okay.

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- 1 THE COURT: In October. This is right after he was
- 2 told that he received the documents that he would be receiving
- 3 this federal fund.
- 4 MR. EVERDELL: Right.
- 5 THE COURT: Then it continued.
- 6 MR. EVERDELL: Which is the grant's awarded on --
- 7 THE COURT: That conversation -- let me just see who
- 8 this is with. This does seem to be with the defendant. I
- 9 think there was mention of Gurfein there in the question. And
- 10 that does involve rent and utilities.
- 11 MR. EVERDELL: That's correct, your Honor. So she's
- 12 having conversations, actually multiple conversations with both
- 13 the defendant and Lee Gerfein before the funds are being drawn
- down in October of 2001, telling him specifically you can't use
- 15 ATP funds to pay for rent, utilities.
- 16 And furthermore, your Honor, if you look at the spread
- 17 sheets, these rent payments were paid out over the course of
- 18 several months, even after the initial drawdown. So these
- 19 conversation he's having with --
- 20 THE COURT: 258 is the discussion. I thought there
- 21 was something from Ms. Lide also.
- 22 Well, that seems to cover the rent and utility, and
- 23 that seems to raise the issue of the defendant's intent, so I
- 24 have to deny the motion. That's what I got to do.
- 25 All right, anything further? No word on --

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- 1 MR. EVERDELL: No, your Honor. The appeals
- division -- sorry, your Honor. The appeals division wasn't
- 3 able to find anything applicable, so I think we'll just stay
- 4 with what we have.
- 5 THE COURT: All right. I might come up with
- 6 something. I'll look at a few things. I want to look at Mr.
- 7 Rubinstein's case that he referred me to. And you referred me
- 8 to U.S. versus Thompson.
- 9 MR. EVERDELL: I referred you to U.S. versus Nieman.
- 10 THE COURT: Nieman, 211 Fed. 3d. He wants me to look
- 11 at U.S. versus Thompson.
- 12 MR. EVERDELL: Correct. Mine's 211 F.3d, 40.
- 13 THE COURT: Yeah, I've got that.
- MR. EVERDELL: Thank you, your Honor.
- 15 THE COURT: Okay.
- 16 MR. RUBINSTEIN: Thank you very much, your Honor.
- MR. KWOK: Thank you, your Honor.
- 18 THE COURT: All right, work hard on your summation.
- 19 MR. EVERDELL: I will, your Honor.
- 20 MR. KWOK: Certainly, your Honor.
- 21 THE COURT: Work hard on your summations all night.
- Be here at 9:30 in the morning.
- MR. KWOK: Thank you, your Honor.
- MR. EVERDELL: Thank you, your Honor.
- 25 (Adjourned to June 11, 2008 at 9:30 a.m.)

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1	UNITED STATES DISTRICT COURT	
	SOUTHERN DISTRICT OF NEW YORK	
2	x	
3	UNITED STATES OF AMERICA,	New York, N.Y.
4	V.	S2 07 CR 541 (RPP
5	DANIEL B. KARRON,	
6	Defendant.	
7	x	
8		
		June 11, 2008
9		9:2 a.m.
10		
	Before:	
11		
	HON. ROBERT P. 1	PATTERSON, JR.,
12		
13		District Judge

14

15	MICHA	AEL J. GAF	RCIA					
		United St	tates At	ttorney :	for t	he		
16		Southern	Distri	ct of New	w Yor	k		
	BY:	STEVEN KV	VOK					
17		CHRISTIAN	N EVERDI	ELL				
		Assistant	United	d States	Atto:	rneys		
18								
	RUBI	NSTEIN & (COROZZO	, LLP				
19		Attorneys	s for De	efendant				
	BY:	RONALD RU	JBINSTE:	IN				
20		WILLIAM I	DiCENZO					
21								
	Also	Present:	Rachel	Ondrik,	U.S.	Dept.	of	Commerce
22			Kirk Ya	amatani,	U.S.	Dept.	of	Commerce
23								
24								
25								

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- 1 (Trial resumed; jury not present)
- THE COURT: If Mr. Rubinstein isn't here, and I think
- 3 it's important that both sides check either side's exhibits and
- 4 make sure they are the exhibits admitted in evidence. Mr.
- 5 Rubinstein nor his associate is here. So he better get in
- 6 here, Robert. We've got to make sure those exhibits are
- 7 correct.
- 8 They were offered in evidence and they were admitted
- 9 in and not for identification.
- 10 MR. KWOK: Certainly, your Honor.
- 11 THE COURT: Is he outside, the associate?
- 12 MR. EVERDELL: I could go check, your Honor.
- 13 THE COURT: Because he should be checking your
- 14 exhibits.
- 15 Robert, would you get Mr. Rubinstein's associate.
- 16 THE DEPUTY CLERK: He was in the bathroom a second
- 17 ago.
- 18 THE COURT: Oh.
- 19 (Mr. DiCenzo now present)
- 20 THE COURT: Mr. Rubinstein isn't here, but -- I've
- 21 forgot your name.
- 22 MR. DiCENZO: William.
- THE COURT: You'll have to check the Government's
- 24 exhibits to be sure that they're exhibits admitted in evidence
- 25 and they have to examine your exhibits to be sure they were

- 1 admitted in evidence, and not just for identification.
- 2 MR. DiCENZO: Okay. I had --
- 3 THE COURT: Because we don't want to something arise
- 4 during summations where they say, oh, that wasn't admitted in
- 5 evidence and you say oh, or Mr. Rubinstein says that wasn't
- 6 admitted in evidence, so.
- 7 MR. DiCENZO: It was -- there was one small, I think
- 8 it's defense exhibit Q that was a question whether it was
- 9 admitted in evidence. I wanted to check the record. I'll show
- 10 it to you.
- 11 THE COURT: When was it offered?
- 12 THE DEPUTY CLERK: June 6th, I think.
- 13 THE COURT: I can look at my notes, but it would help
- if when it was offered, maybe I could help you. Take it up
- 15 with the government. Maybe they have no objection to it. I
- don't know. I have to see Q -- show it to them. Show them Q.
- 17 Show them Q and they can determine whether they have an
- 18 objection. I've forgotten what Q was.
- 19 MR. KWOK: I think it's a chain of e-mails, your
- 20 Honor, relating to Frank Spring.
- 21 THE COURT: Relating to what?
- 22 MR. KWOK: Frank Spring, the government witness with a
- 23 slight British accent.
- 24 THE COURT: Here's Mr. Rubinstein.
- THE DEPUTY CLERK: It was part of 3507.

23

24

or was it --

1	THE COURT: Oh, all right.
2	THE DEPUTY CLERK: Part of 3507.
3	THE COURT: 3507 is about 3 inches thick.
4	(Mr. Rubinstein now present)
5	THE DEPUTY CLERK: I had it as bottom of page two, all
6	of page three and then the top of page four. That's the note
7	that I had on what it actually was from all those documents,
8	but I never actually saw that exhibit was
9	THE COURT: Do your records show it was admitted?
10	THE DEPUTY CLERK: No. I have it the last thing I
11	have was that you were saying that it should be as to what
12	it should be, but it was never actually said it was admitted,
13	but discussion was exactly what it was supposed to be.
14	THE COURT: It may have just been done to refresh his
15	recollection.
16	What page was it? What page was it on?
17	THE DEPUTY CLERK: 885.
18	THE COURT: My record is where?
19	THE DEPUTY CLERK: Is that it, June 6th?
20	THE COURT: I don't believe so. This is 11.
21	THE DEPUTY CLERK: Today's, they have it.
22	THE COURT: Was it used just to refresh recollection

25 now. He didn't recollect the subject of the e-mail that was

MR. KWOK: I think it was to -- we're looking right

- shown to him, and it was not actually admitted -- there was
- 2 actually an objection lodged.
- 3 THE COURT: I saw the objection, but I didn't know
- 4 whether -- what happened.
- 5 MR. EVERDELL: It doesn't look like it was ever
- 6 admitted.
- 7 THE COURT: It was used just to refresh recollection.
- 8 MR. KWOK: I think that's fair.
- 9 MR. EVERDELL: Yeah.
- 10 MR. DiCENZO: I think I it was like going to be
- admitted and then questioned is it the whole page, not the
- 12 whole page, and then they objected and they -- there was no
- 13 further dialogue with the Court on whether it was admitted or
- 14 it wasn't admitted.
- 15 THE COURT: I don't remember the subject matter.
- MR. EVERDELL: He says, "I don't recollect, your
- 17 Honor."
- 18 THE COURT: Ask Mr. Rubinstein. Exhibit Q, Mr.
- 19 Rubinstein, for identification or was it admitted? I think it
- 20 was used to refresh recollection.
- 21 MR. RUBINSTEIN: Who is the witness?
- MR. EVERDELL: Spring.
- MR. RUBINSTEIN: I think it was used to refresh
- 24 recollection.
- 25 MR. EVERDELL: I don't think it's admitted.

- 1 THE COURT: Well, then it isn't -- it's for
- 2 identification only, Mr. William.
- 3 MR. EVERDELL: So no Q, right.
- 4 THE COURT: Before you came, Mr. Rubinstein, I asked
- 5 both sides to check the other's exhibits so that we don't have
- 6 a dispute in the middle of summations as to whether something's
- 7 admitted or not.
- 8 MR. RUBINSTEIN: Absolutely, Judge. Mr. DiCenzo is
- 9 fine. Mr. Kwok saw me in my new work place hiding from
- 10 everybody I commandeered the cafeteria. The back wall has a
- 11 very nice ledge, I don't have to hurt my back, and I can spread
- my papers out.
- 13 THE COURT: Okay. Are you all through?
- 14 THE DEPUTY CLERK: Did that work out with your
- 15 exhibits?
- 16 MR. KWOK: Yes, with one minor change. I think we'll
- just admit it by stipulation?
- 18 THE DEPUTY CLERK: Okay. Which one?
- 19 MR. KWOK: 104.
- 20 THE DEPUTY CLERK: Okay.
- 21 THE COURT: What is 104?
- 22 MR. KWOK: 104 is an invoice, your Honor, that was
- 23 admitted by stipulation.
- 24 THE COURT: Each expect to take what, 40 minutes?
- MR. RUBINSTEIN: Pardon?

- 1 THE COURT: Summations, 40 minutes? MR. KWOK: For me I think around that neighborhood. MR. RUBINSTEIN: I seriously doubt that, your Honor. 3 4 THE COURT: What? 5 MR. RUBINSTEIN: I would think an hour and a half. THE COURT: It's awful long. 6 7 MR. RUBINSTEIN: Actually it's probably the second 8 shortest summation, maybe the third shortest summation that I've ever planned. I don't even think I have one full redwell. 9 10 THE COURT: Well, I'll remind you throughout the --11 MR. RUBINSTEIN: Okay. 12 THE COURT: Where you are. But an hour and a half, 13 you're going to put people to sleep. I don't think if you take 14 40 minutes, I don't think you need to take more than an hour. We have rebuttal. If that means I've got to give the 15 16 government a longer rebuttal, I don't want to give the 17 government a longer rebuttal. I don't want the government --18 an hour and a half would mean the government would probably have to engage in a half-hour or so of rebuttal instead of 10 19 20 or 15 minutes at the most. 21 MR. RUBINSTEIN: Well, I'll try and cut it down to an
- 23 THE COURT: All right.

hour, Judge.

2.2

- 24 MR. EVERDELL: Do I have time to run to the restroom?
- THE COURT: Excuse me?

- MR. EVERDELL: Do I have --1
- THE COURT: Of course. Let me see if there's anything
- else that we ought to take up. I wanted to take up the small 3
- 4 changes I made in the charge after our conference.
- 5 MR. EVERDELL: Okay.
- THE COURT: You want to take those up now? 6
- 7 MR. KWOK: Sure, we can take those up now.
- 8 MR. EVERDELL: All right, then I'll --
- THE COURT: I've handed out a copy of the charge, I 9
- 10 believe you've got it. And I, on the tracing, I added in, to
- that section, money is fungible and the government need not 11
- 12 trace back.
- MR. EVERDELL: This is in element five? 13
- 14 THE COURT: On page 22. On page -- I don't think page
- 11 need discussion about government employee. You're aware of 15
- 16 that.
- On page 17 we took the overall description of the 17
- 18 indictment and made it consistent with the latter part of the
- 19 charge, saying that intentionally misapplied \$5,000 and more in
- 20 the care, custody and control of CASI, while it was the
- 21 beneficiary of a federal grant of more than \$10,000 a year.
- 2.2 I think those are the only changes. You might look at
- 23 the section having to do, on page 23, having to do with
- 24 tracing; otherwise, it's as we agreed.
- All right, why don't you take your break. 25

23

24

25

1 MR. KWOK: Thank you, your Honor. MR. EVERDELL: Thank you. (Recess) 3 4 (Jury entering) THE COURT: All right, please be seated. 5 Ladies and gentlemen, we're about to hear -- ladies 6 7 and gentlemen, we're about to hear the summations of counsel. You're reminded that summations of counsel are not evidence. 8 You have the evidence before you in the form of the testimony 9 10 and the exhibits received in evidence and the stipulations, but 11 summations can be a help to the jury and help their thinking in 12 terms of their review of the evidence. That's what summations 13 are for. 14 So you'll first hear from the government, and then you'll hear from the defense, and then the government gets a 15 16 short rebuttal. So we'll start with Mr. Kwok and then hear from Mr. Rubinstein and, I don't know, Mr. Everdell or Mr. 17 18 Kwok -- Mr. Everdell, you're going to do the rebuttal. 19 Mr. Kwok. 20 MR. KWOK: Thank you, your Honor. 21 For a year and a half, Daniel B-Karron, the defendant, 2.2 cheated the government for over half a million dollars. He

cheated a program that supported him and his company, ATP, the

Advanced Technology Program that supports high risk scientific

research. The rules were clear and simple, and Dr. Karron knew

what they were; expenses not included in approved budget could 1

- 2 not be paid for with grant money. But the defendant just
- didn't care. He said he could do whatever he wanted, and 3
- 4 that's exactly what he did. He treated the grant like his own
- 5 personal piggy bank. He wouldn't take no for an answer.
- Before the grant was shut down, the defendant used 6
- 7 taxpayers money to pay mortgage on his condo, a cleaning lady,
- 8 medical procedures and household items like this blender, this
- GPS system, and these power tools. All told, the defendant 9
- 10 misapplied about half of the \$1.3 million his company CASI got.
- When this trial began, the government told you that 11
- the evidence would prove to you, beyond a reasonable doubt, 12
- 13 that the defendant is guilty of the crime charged in the
- indictment. The evidence is now in, and that's exactly what it 14
- 15 shows.
- First, take a look at what is not in dispute in this 16
- 17 trial. At the close of this case Judge Patterson will instruct
- 18 you on the law. It is his instructions that control. I expect
- 19 that you will learn that in order to find the defendant guilty,
- 20 the first thing that you have to do is to decide whether he was
- 21 an agent of Computer Aided Surgery, Inc. or CASI. There is no
- 2.2 dispute that the defendant was the president and the chief
- technical officer of CASI. How do you know? You know from the 23
- 24 documents the defendant signed in his capacity as president and
- C. T. O. There's no dispute about any of these documents. 25

- 1 Let's look at government exhibit 10A. That's the application
- 2 the defendant submitted to apply for the grant. D. B. Karron
- 3 Ph.D., chief technical officer, Computer Aided Surgery, Inc
- 4 government exhibit 12 is the government document defendant
- 5 submitted as president agreeing to comply with the award
- 6 provisions.
- 7 Dr. Karron also submitted this letter, government
- 8 exhibit 21, again as CASI's president and chief technical
- 9 officer, saying that his business manager Lee Gerfein had no
- 10 authority to sign for or commit CASI financially.
- In addition to finding that the defendant was an agent
- 12 of CASI, I expect Judge Patterson will also tell you that you
- 13 also have to decide whether CASI received federal funds in
- 14 excess of \$10,000 during a one year period. There's also no
- 15 dispute about that.
- 16 You heard the uncontradicted testimony of Betti Joyce
- 17 Lide, the first witness who came before you. She was one of
- 18 the true project managers for the grant. And Ms. Lide told you
- 19 that CASI got \$800,000 during year one of the grant. And she
- 20 told you CASI got about half a million dollars in year two
- 21 before the grant was shut down.
- 22 Hope Snowden and Belinda Riley both told you the same
- 23 thing.
- So, ladies and gentlemen, what is in dispute in this
- 25 trial? It all comes down to this: Whether the defendant

1 intentionally misapplied \$5,000 or more of funds under CASI's

- 2 control to pay for unauthorized expenses. Before I turn to the
- defendant's intent, let's go through the evidence before you 3
- 4 that shows you that the defendant did in fact misapply \$5,000
- 5 or more in funds under CASI's control.
- Now, there are a lot of numbers being thrown around in 6
- 7 this trial, because huge sums of money are involved. But when
- 8 you get down to it, the misapplication of funds is very simple.
- The grant specialist, Ms. Snowden, told you that the rules 9
- 10 under the ATP program are simple. She testified that she told
- 11 award recipients, including Dr. Karron, that your award budget
- is like your Bible; you must follow the budget unless you get 12
- 13 advanced written approval to change it. Items that don't fall
- 14 under any approved categories in the budget can't be paid for
- using grant money. It is that simple. Even for things that 15
- 16 can be paid for with grant money in theory, you need written
- 17 approval if you spent more than what is allowed in the budget,
- 18 unless the change is small, defined as any amount less than
- 19 10 percent of the annual total budget.
- 20 So how did actual spending at CASI stack up against
- 21 that approved budget at CASI? Now, there really is no serious
- 2.2 dispute about how CASI spent its money, because all of the
- 23 transactions are documented in bank records and credit card
- 24 statements. Witnesses may get flustered, they may not be able
- to do math on the stand, they may get nervous, but approved 25

1 budget and the cold hard numbers in these financial statements,

- 2 they speak for themselves.
- Now you heard about audits in this case. Audits are 3
- 4 nothing more than a sample testing based on the company's books
- 5 and records. They're subject to change as the company's
- records change. These audits aren't perfect, especially when 6
- 7 the company books were a mess and the government already
- 8 auditor, Ms. Riley, told you that herself.
- But you don't have to rely on Ms. Riley's or on anyone 9
- 10 else's audits in this case, because the government has put
- before you bank records, credit card statements, and vendor 11
- 12 invoices showing exactly where the money that came into CASI
- 13 came from, and where that money went. There is no guesswork
- involved in this case. 14
- 15 Now, in his cross-examination, defense counsel kept
- 16 referring to different sets of books kept at CASI at different
- 17 times by different people, and these changing books make it
- 18 seem as though it's cetera impossible to tell what really went
- 19 on. Ladies and gentlemen, that's a red herring. None of that
- 20 matters. Those financial records don't depend on what CASI's
- 21 books say or don't say. These records come directly from the
- 2.2 banks and from the credit card company showing exactly where
- 23 the money went.
- 24 Now, to help you review these records, Ms. Riley
- created a spread sheet, that spread sheet, government Exhibit 25

1 110, showing exactly what went on in CASI's business accounts.

- 2 So let's go through some examples to show you how that spread
- sheet works. 3
- 4 Now, here's a page from government exhibit 90, the
- 5 American Express credit card statements issued to CASI for the
- defendant's use. The list of transactions on this page and on 6
- 7 the following pages are transactions made under the name of
- 8 Dr. D. B. Karron. It says that right there on the page. As an
- 9 example, take a look at page three of this monthly statement
- 10 and find November 29th, 2002. There was a charge for \$13.91 at
- Starbucks Coffee, New York. Now, that information is reflected 11
- 12 in the spread sheet Ms. Riley created, government Exhibit 110,
- 13 page 25 of 37; Starbucks Coffee, \$13.91. As another example,
- let's go to December 3rd, 2002 of the credit card statement. 14
- Dr. Karron went to IHop, and incurred a charge of \$33.84 in 15
- 16 Arlington, Virginia. That information is once again reflected
- 17 in Ms. Riley's spread sheet, page 23 of 37, IHop, for \$33.94.
- 18 As a last example, let's go to page three of the credit card
- 19 statement. Dr. Karron went to an Indian restaurant in New York
- 20 and incurred a charge of \$107.75. Again, that information is
- 21 reflected in Ms. Riley's spread sheet, government exhibit 110
- 2.2 again, page 25 of 37. The Indian restaurant, the price,
- 23 \$107.25. Now, let's go to the first page of that credit card
- 24 statement this page shows that the charges we just talked
- about, as well as all the charges during this month, total up 25

1 to around \$1,450.30. And how's that paid for? So let's go to

- the data base and see. Let's go to government Exhibit 110
- again, page three of 37. There is an entry showing CASI made a 3
- 4 payment to American Express, minus \$1,450.30 cents. Right
- 5 there. But don't just take Ms. Riley's word for it. Check her
- work against the bank statements from Chase Bank. So let's 6
- pull that up, government exhibit 81 for the December 21st,
- 8 2002, to January 23rd, 2003 period, page three of four. Here
- it is. December 30th, American Express, \$1,450.30. And what 9
- 10 money went into this Chase account? Let's go to the first page
- of the same exhibit. There it is, let's zoom that in. ATP 11
- grant, 12/31, 20K; January 10th, 20K, January 22nd, 28K. And 12
- 13 Ms. Riley put that information on her spread sheets. Let's go
- back to Ms. Riley's spread sheet, let's zoom that in, right 14
- there. 20K, 20K, 28K on the dates that I just referred to. 15
- 16 But Ms. Riley didn't just put into this spread sheet money
- 17 coming in from the ATP. Where there was money coming from
- 18 elsewhere, Ms. Riley put that in as well. You remember when
- 19 Ms. Riley was up on that witness stand, Mr. Rubinstein waived
- 20 around these cancelled checks, government exhibit -- defense
- 21 exhibit FFF to show that Dr. Karron put his money into CASI.
- 2.2 It's not clear what the point of all that was, but one thing is
- 23 certain, if the point was to show that Ms. Riley made a
- 24 mistake, that didn't work. There was no Perry Mason moment
- there, because all of this information is reflected in Ms. 25

1 Riley's data base. So let's go take a look at government

- 2 Exhibit 110, page 38 of 44, they are all right there.
- 3 Ms. Riley is an auditor. She might not have been the most
- 4 articulate witness, but she didn't overlook these checks. What
- 5 government exhibit 110, page 38 of 44 shows, is that while Dr.
- 6 Karron did put money into CASI, he also made CASI loan him
- 7 money, a lot of money. And at the end of the day, once you
- 8 subtract the numbers, and you take into account tax
- 9 withholding, Dr. Karron ended up taking out more money from
- 10 CASI than what he loaned CASI and what he is entitled to in
- 11 salary. And the ATP grant ended up being the only source of
- 12 funding that went into CASI's business account in year one.
- 13 And that's exactly what government Exhibit 112 shows.
- But you don't have to rely on numbers alone. You also
- 15 heard the testimony of Lee Gerfein. Mr. Gerfein told you that
- 16 he spent 25 percent of his time at CASI fund raising trying to
- 17 get CASI additional sources funding, aside from the ATP fund.
- 18 But Mr. Gerfein told you he was unsuccessful and didn't bring
- 19 in any money at all while he was at the company during year one
- of the grant. His testimony is fully consistent with what
- 21 government Exhibit 112 shows.
- Now let's go to year two, government Exhibit 113.
- 23 Again for year two, the purple area represents how CASI's
- 24 accounts were funded by the ATP grant on that. You can see for
- 25 yourselves that for virtually all the money, it came from ATP

1 except for a tiny slice there, which summed up to approximately

- 2 \$1700, which came from miscellaneous refund checks. Again,
- this is fully consistent with the testimony of the last 3
- 4 business manager, Bob Benedict, who told you that ATP was
- 5 CASI's only source of funding.
- Let's turn now to how the defendant spent all that 6
- 7 money. I said how the defendant spent all that money, because
- 8 as you heard from the business managers Lee Gurfein and Bob
- 9 Benedict, the defendant was the only person who had signing
- 10 authority. And as you can see for yourself in the checks, D.
- 11 B. Karron was the only one who actually signed checks.
- 12 When Judge Patterson instructs you on the law later, I
- 13 expect you will learn that to satisfy the requirement of the
- 14 statute, the amount of misapplication the government would need
- to prove is \$5,000 and more. So let's take a look at 15
- 16 government exhibit 114 and see what happened to the money in
- 17 year one.
- 18 As Ms. Riley explained to you, the chart to the left
- 19 shows the break down by budget categories, according to the
- 20 approved budget, how the money is supposed to be spent. The
- 21 chart to the right shows what actually happened, what actually
- 2.2 happened to the money. Remember, all the government needs to
- 23 prove is \$5,000 in misapplied funds. Forget about everything
- 24 else in this chart for now, just look at the rent. Rent alone
- was \$60,000, 12 times, 12 times, ladies and gentlemen, above 25

- 1 the \$5,000 threshold.
- You heard a lot of testimony about rent. Hope Snowden
- testified that you couldn't use research money to pay rent, 3
- 4 period. It doesn't matter whether you used the condo in part
- as an office. It doesn't matter that ATP is the only project 5
- the company is working on; no means no. And that's because the 6
- 7 ATP project is to fund high risk scientific research, not
- 8 overhead expenses that every business has to pay. And the
- 9 defendant tried to get rent approved, using different
- 10 justifications, but he was explicitly told no, time and time
- 11 and time again. And the defendant didn't just hear it from the
- 12 NIST people. The defendant got the same no answer from his two
- 13 business managers, Lee Gerfein and Bob Benedict, who contacted
- 14 NIST at the defendant's request, got the same no answer and
- told the defendant no. The defendant got the same no answer 15
- 16 from his bookkeeper Frank Spring. Despite all these no
- 17 answers, we all know what happened. The defendant said he
- 18 could do whatever he wanted. He said the people at NIST loved
- 19 him. He went ahead and he did it anyway.
- 20 Ladies and gentlemen, the government could stop right
- 21 here and meet the \$5,000 threshold required by the statute, but
- 2.2 we didn't stop there because the crime the defendant committed
- 23 got worse, much worse. Once the defendant decided to cheat, he
- 24 decided to go all out. After all, why limit yourself to rent.
- Utilities are sort of like rent, right. You can't work or live 25

1 in a place without electricity or air conditioning, right.

- 2 let's use grant money to pay for that too. And that's exactly
- what he did, over \$16,000 in utilities in year one alone. But 3
- 4 wait. Why limit to represent and utilities? After all, you
- can't live or work in a place that's too messy, right, so let's 5
- hire a cleaning lady and to do some dusting and wiping and have 6
- 7 taxpayers pay for that too. And that's exactly what he did,
- cleaning over \$5,000 in year one. Why stop there? After all, 8
- you can't work if you're hungry, right. So let's throw in 9
- 10 meals for good measure, and have Uncle Sam pay for that too.
- Close to \$2,000 in year one alone. 11
- 12 Now, you remember Mr. Rubinstein asking Ms. Riley
- 13 questions about meals. He showed her receipts of meals that
- 14 Dr. Karron had with handwritten notation on the back showing
- that he ate with other people. You remember that. Well, so 15
- 16 what. Does anyone seriously think that you can go to IHop as
- 17 defendant did, and have taxpayers pick up the tab because you
- 18 claim you talked about the project over pancakes? There's no
- 19 line item in approved budget for meals, so you can't pay for
- 20 meals with grant money, period. It is that simple.
- 21 But no, defense counsel said it's not so simple
- 2.2 because there's this category called others that maybe you can
- 23 fit it in. Well, guess what? This is not a game to see who
- 24 could come up with the cleverest argument to see whether you
- could make something fit. There are rules. There are written 25

1 budgets. And so let's go to government exhibit 10B, page

- 2 seven. This is the proposed budget the defendant himself
- submitted that NIST later approved. You can see what others is 3
- 4 referring to. It's referring to audits, not meals; audits,
- 5 that's it. And so no, the defendant couldn't go to a
- restaurant, claim he was talking about the project over dinner 6
- 7 and have the federal government pay for it. Instead, he needed
- 8 to pay for it himself from his own salary, just like everybody
- else in New York City who doesn't get a federal grant. 9
- 10 Before I leave government exhibit 114, let me just
- 11 make one more point. Remember when Ms. Riley was up on the
- stand. Mr. Rubinstein spent a good part of the morning 12
- 13 cross-examining her about her audit finding about Lee Gerfein's
- 14 salary. Remember that? Mr. Rubinstein kept asking Ms. Riley
- why she disallowed 25 percent of Mr. Gerfein's salary, when the 15
- 16 approved budget -- it was made clear that Mr. Gerfein could
- 17 split his time 75 on the project, 25 on everything else? And
- 18 Mr. Rubinstein kept pushing and pushing to try Ms. Riley to
- 19 admit that she made a mistake in her audit. And Ms. Riley
- 20 tried to explain how she didn't make a mistake that had
- 21 something to do with tax withholding and the difference between
- 2.2 expected and actual salary; you remember all that? But you
- 23 know what, ladies and gentlemen, at the end of the day, none of
- 24 that matters. As you can see on this chart, when Ms. Riley did
- her analysis using the bank records as opposed to her audits, 25

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1 which were based on the company's books and records, she gave

- 2 the defendant every benefit of the doubt. Look at this
- 3 yourself. Under the budget for other employees salary, let's
- 4 go back to the last page. For other employees salary budgeted
- for \$450,000, not a single cent of other employees salary was
- 6 disallowed. In fact, according to government Exhibit 114, the
- 7 company was actually under budget under the category of other
- 8 employees salaries. For equipment, Mr. Rubinstein also asked
- 9 Ms. Riley about whether she examined every piece of equipment
- 10 that CASI bought. Remember all that? Again, Ms. Riley gave
- 11 the defendant every benefit of the doubt. Again, in this
- 12 analysis, Ms. Riley wasn't even second guessing whether
- 13 defendant bought the equipment related to his research for
- 14 equipment. The only amount that she disallowed was the amount
- 15 over budget, that's it.
- 16 So what is the end result of the defendant's conduct?
- 17 Even giving him the benefit of the doubt? Over \$268,000 in
- 18 misapplied funds in year one alone. Make no mistake, this is
- 19 taxpayers money, because as you saw in the purple charts just
- 20 now, the ATP program was the only source of funding in CASI's
- 21 business accounts in year one.
- 22 And in year two, defendant didn't get through the
- whole year because he got shut down, but he blew away over
- 24 \$196,000 in just nine months, spending money on the same items
- 25 that he was told time and again he could not spend grant money

- 1 on; things like rent, utilities, cleaning lady, and meals.
- Now that we've walked through the numbers, let's turn
- to the defendant's intent. I expect Judge Patterson will 3
- 4 instruct you later that to find the defendant guilty you need
- to find that he intentionally misapplied the grant money; in 5
- other words, that the defendant's conduct wasn't simply the 6
- result of a mistake or misunderstanding. So what is the
- 8 evidence to show you that the defendant knew full well what he
- did was wrong? Let's start from the beginning where the 9
- 10 defendant hired Mr. Lee Gerfein as his business manager.
- Mr. Gerfein told you that when he was first hired, the 11
- 12 defendant agreed to an arrangement where each check over \$250
- 13 would have to be co-signed by himself, Mr. Gerfein, and Dr.
- 14 Karron. That was the understanding Mr. Gerfein had when he got
- job. Then what happened? Within a week the grant money came 15
- 16 in, the defendant wrote this letter, Government exhibit 21,
- 17 page three, taking the signing authority away from Mr. Gerfein.
- 18 Now, ladies and gentlemen, why did the defendant do that? It's
- 19 simple. The defendant did that because he wanted exclusive
- 20 control of the grant money. Stripping Lee Gerfein of his
- 21 signing authority was necessary because defendant was already
- 2.2 planning to use money for his own benefit. One week into the
- 23 program, and the defendant was already thinking ahead.
- 24 fact, the defendant made no secret of this at the time.
- 25 Mr. Gerfein told you that when the grant money came in, Dr.

- 1 Karron transferred \$75,000 into his own account to pay off
- 2 family and credit card debt that he had been racking up from
- every day living expenses. Mr. Gerfein testified that he told 3
- 4 the defendant he couldn't do that, he couldn't spend grant
- money this way. The defendant said he had to do it, he had to 5
- pay the bills. And Mr. Gerfein, after he had been stripped of 6
- 7 his signing authority, couldn't stop him because this was
- 8 already a done deal.
- What else shows you the defendant knew full well what
- 10 he did was wrong? Let's focus on rent again, because it's such
- a big item. Time and again, people told him he couldn't use 11
- 12 grant money to pay rent, no matter what. The grant people,
- 13 Ms. Lide, Ms. Snowden, told him no at the kickoff meeting, they
- 14 told him no in telephone and in person conversations.
- Defendant's own employees told him no. Dr. Karron asked Lee 15
- 16 Gerfein to call the grant on his behalf. And when Mr. Gerfein
- 17 got the no answer, he relayed that information back to the
- 18 defendant. And Bob Benedict even before he was hired, told the
- defendant no, and he kept telling the defendant no after he 19
- 20 came on board to CASI.
- 21 After all these conversations, does anyone believe for
- 2.2 a minute that the defendant didn't know he couldn't use grant
- 23 money to pay rent? Of course not.
- 24 But what clinches the case against the defendant on
- his intent is the defendant's own statements. Look now at 25

1 government Exhibit 213. This is an e-mail you saw a few days

- 2 ago from Dr. Karron to someone named Tia Lorraine, dated
- December 18th, 2002. Reading from the fourth line of the 3
- 4 bottom of the page, let's zoom that in.
- 5 "I will make a lease with Windy and make like I only
- keep a folding bed on 33rd Street. If ATP buys into this idea, 6
- 7 then I can charge my rent on the apartment to the grant and pay
- 8 my mortgage."
- There's no mistaking the defendant's intent here.
- 10 told a friend he would "make like" that he keeps a folding bed
- on 33rd Street and he was hoping that ATP would "buy into this 11
- 12 This e-mail is devastating proof of the defendant's idea."
- 13 intent in his own words. But if you need more proof of the
- defendant's criminal intent, take a look at these items; a 14
- blender, a GPS tracking device, digital camera, a box of 15
- 16 drills, a dust buster.
- 17 Now, ladies and gentlemen, these may not be the most
- 18 expensive items in the world, but can anyone seriously think
- 19 that these items are related to the defendant's research on
- 20 surgery and computer imaging? These items he bought just show
- 21 you his mind set. They tell you that, when the defendant said
- 2.2 he could do whatever he wanted, that he could just schmooze
- 23 with people and take them out to lunch and everything would be
- 24 okay, he meant every word he said. But there's more. When
- year one was over and the auditor was beginning to look at the 25

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1 books, what did the defendant do? Frank Spring told you what

- 2 the defendant did, the defendant changed the books. You saw
- 3 those e-mails. Mr. Spring asked defendant to stop mucking
- 4 about in the books, and stop recharacterizing expenses as
- 5 related to the grant when they really weren't. And what
- 6 happened? The defendant kept changing the books. Is that the
- 7 behavior of someone who has no clue what he did was wrong? Of
- 8 course not. Common sense tells you that's the behavior of
- 9 someone who knew what he did was wrong and was doing his mighty
- 10 best to hide it as best he could.
- 11 Ladies and gentlemen, make no mistake, this isn't a
- 12 case about a misunderstanding. This isn't a case about someone
- 13 getting caught up in some compact grant rules and forgot to dot
- 14 the I's or cross the T's. This is a simple case about the
- 15 defendant, a Ph.D. scientist, willfully cheating the government
- 16 with his eyes wide open.
- When you apply your common sense to the evidence
- 18 presented before you, and when you listen closely to Judge
- 19 Patterson's instructions on the law, there's one and only one
- 20 conclusion that's supported by the evidence and the law, and
- 21 that is a verdict of guilty on the count that's charged in the
- 22 indictment. Thank you.
- 23 THE COURT: All right. Mr. Rubinstein.
- MR. RUBINSTEIN: Could I step out for a minute Judge?
- 25 Could I have a personal moment? Thank you.

86bzkarl Summation - Mr. Kwok

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Τ	THE CO	OR.I.:	All	rıç	gnt.	Does	tne	Jury	need	a	break?
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- 1 MR. RUBINSTEIN: May I proceed, your Honor?
- THE COURT: Yes. Go ahead.
- MR. RUBINSTEIN: If the Court pleases, people of the 3
- 4 prosecution, Dr. Karron and my associate you never met, William
- 5 Disento, madam forelady, ladies and gentlemen of the jury, this
- is my opportunity to share with you what I believe that the 6
- evidence showed.
- Now, let me say at the outset that it's your 8
- recollection that controls. You have been sitting here 9
- 10 watching the witnesses, observing the exhibits that are in
- 11 evidence. I have been concentrating on my examination of the
- 12 witnesses, and if I misspeak as to what any particular witness
- 13 may have said, it's your recollection that controls, not mine.
- 14 If there is a question amongst you as to what a
- particular witness said, you have the right to come back and 15
- 16 ask for the transcript to be given to you or read to you by the
- 17 court reporter, whatever the system is that Judge Patterson may
- 18 have. But you get the exact words that were said. And I will
- 19 attempt to be as accurate as humanly possible.
- 20 What is the purpose of summation? The purpose of
- 21 summation is for each party to give the jury their sense of
- what the evidence shows and what inferences can fairly and 2.2
- 23 reasonably be drawn.
- 24 Now, after I finish speaking, the prosecutor has an
- opportunity to rebut. He can sit there with a pad, write down 25

- 1 notes and give you answers to what I have raised in this
- 2 summation. And everybody in life likes to have the last word,
- but the reality is that you folks have the last word, because 3
- 4 you collectively and individually could answer their arguments
- 5 for Dr. Karron that I'm not able to because I don't have a
- chance to talk again. 6
- 7 As a matter of fact, no matter how hard I may prepare,
- 8 there is no way in the world that I am going to come and give
- you all the arguments there are or even the best arguments. 9
- 10 You folks have a fantastic opportunity as jurors. The
- second highest calling in this country next to war time service 11
- is sitting on a criminal jury, judging a fellow human being. 12
- 13 This is a high calling. It's what distinguishes our society
- 14 from many others, because you stand between justice and
- injustice. Every place has a prosecutor, but not many places 15
- 16 have jurors who come and sit and deliberate.
- 17 Now, you may notice that when you come into this
- 18 courtroom and when you leave this courtroom we all rise for
- 19 you, and we do the same when Judge Patterson comes in, because
- 20 that is the reverance and the respect that we have for each and
- 21 every one of you as jurors.
- 2.2 You are the sole and exclusive judges of the facts.
- 23 They can't tell you what the facts are. I can't tell you what
- 24 the facts are. You tell me what the facts are.
- 25 I can talk about the evidence. I can talk about the

- 1 lack of evidence. I can talk about burdens, but you are the
- 2 sole triers of the facts. You decide what you believe, what
- you accept, what you don't believe, what you question. 3
- 4 your role.
- 5 The judge, he is the judge of the law, the sole and
- exclusive judge of the law. I as a lawyer have a right to 6
- 7 disagree with him respectfully, but I tell you one thing about
- 8 Judge Patterson that you know by now: Nobody respects jurors
- more than he does. Getting in on time, keeping his commitment 9
- 10 to you of ending a case, that's the way he functions, because
- he understands what a high duty you have and what a service you 11
- 12 are performing.
- 13 Now, when you come into this courthouse and you are
- 14 going towards the elevators you have seen the Lady of Justice
- with her scales out there. And it's interesting that our 15
- 16 foreperson is a lady. And what is she? She is blindfolded;
- she is not blind. She is blindfolded. The reason that she is 17
- 18 blindfolded is that she has the scales, she wants to treat
- 19 everybody fairly regardless of your background, or how you
- 20 look, or how you act, whether you are a bowery bum or a person
- 21 of high standing. And then she puts on those scales of
- 2.2 evidence and then she sees, she feels because she is
- 23 blindfolded. But she can see -- she is not blind. She is only
- 24 blindfolded -- whether or not the burden has been met by the
- government, whether or not they have proved their case beyond a 25

- 1 reasonable doubt.
- We're here because there was an indictment filed
- against Dr. Karron. You heard how many years they were 3
- 4 investigating him. The judge will tell you the indictment is
- 5 no evidence of quilt. Dr. Karron came into this court and he
- said I am not quilty, I didn't do anything wrong in this case, 6
- 7 and I challenge the government to prove me guilty beyond a
- 8 reasonable doubt. And I submit to you that the judge is going
- to charge you with what a reasonable doubt is, but each one of 9
- 10 you could have a different reasonable doubt, whether or not you
- 11 feel that the prosecution hasn't brought enough evidence before
- 12 you, whether or not they're asking you to be speculative,
- 13 whether or not you think that some of their witnesses weren't
- 14 credible that you would rely upon in the ordinary course of
- life. Each one could have one reasonable doubt. 15
- 16 If any of the 12 of you have a reasonable doubt -- you
- 17 don't have to agree on the same reasonable doubt -- you have to
- 18 vote not guilty, because our system after Dr. Karron pled not
- 19 guilty, our system presumes him innocent, and as you sit here
- 20 now and as you enter the jury room you have to start out saying
- 21 I presume him innocent, I presume that he did not intend to
- 2.2 intentionally misappropriate any funds and he did not intend to
- 23 commit a crime by spending grant money on purchases.
- 24 In fact, when he spent money, he spent money with the
- intent that the ATP project that he was working on would 25

1 succeed and he would be successful, because I think it's fair

- 2 to say that a scientist loves doing what they do and they love
- science. 3
- The government wants you to presume Dr. Karron to be 4
- 5 guilty. They show you a GPS system -- this is his piggy
- bank -- he bought a GPS system so he could use it in his car 6
- for personal use. Did anybody testify that he used the GPS 7
- system to drive around Manhattan? Did anybody bring any 8
- evidence to you that he needed a GPS system for his daily life? 9
- 10 Where did they find the GPS system? Not in the car.
- They found it in the apartment. What does that tell you? He 11
- uses it when he goes on a trip. Where does he go on trips? He 12
- 13 goes to Washington D.C. on a grant.
- Do they come and they take the GPS system and check it 14
- out and see where the last destination is? These GPS systems, 15
- 16 they're electronic, and you can find out where he went if he
- 17 set his course.
- 18 Have any of you ever gone to Washington D.C. and got
- 19 lost on the beltway and couldn't find your way around? No,
- 20 they want you to speculate and assume he used the GPS system
- 21 for an improper purpose. They don't want to show you anything.
- They talk about a camera. A camera. They have the 2.2
- 23 arrogance to suggest to you that he used the camera for his
- 24 personal use. Show us the pictures. It's a digital camera.
- No, here is the camera, you don't use a camera. Why 25

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- don't you use a camera if you are a scientist? Maybe something
- 2 breaks on the machine, on one of the computers, and you take a
- digital picture of it and you e-mail it out to the manufacturer
- 4 and he tells you how to fix it. Or you take pictures of the
- 5 people working in the labs so that when you make
- 6 presentations -- you know he went all over making presentations
- 7 about this ATP grant. Why can't he use the camera? If he was
- 8 a dentist, he could have a camera. No, he can't have a camera,
- 9 that's for his personal use.
- 10 Did they show you pictures of Dr. Karron on his bike
- 11 with Windy Farnsworth riding around Manhattan? No. No. But
- 12 they want you to speculate. They want to suggest to you that
- either it's not in the budget, or if it's in the budget it's
- 14 unrelated to the grant. Where did they show you that anything
- 15 was unrelated to the grant except for speculation and smiles?
- 16 You know, they talk about these ATP rules as if they
- 17 were the Ten Commandments. These are broad rules. You don't
- 18 go to jail because you don't follow some grant rules. What
- 19 kind of country would this be if those were the rules? You
- 20 think they had a big sign like where they have the no smoking
- 21 sign and they have the circle and the thing, violate any of
- 22 these rules you go directly to jail? This is a question of
- 23 people having disagreements on what is allowed and what is not
- 24 allowed. That's what it is.
- 25 And does Dr. Karron have the right to disagree with

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1 people that work for him or disagree with people in ATP? Does

- 2 he have a right to disagree and say that I think that these
- expenses are allowable? Or is he compelled to be like the 3
- 4 prosecutor, say these are the rules, you break one rule you go
- 5 directly to jail?
- Where does the evidence come from? They talk about 6
- 7 Riley's work. Remember, Riley's work was created after they
- closed the grant down. I cross examined her. When did you 8
- prepare this; it says 2008 on it? She says, no, no, no, I did 9
- 10 it before; this is just a redone.
- 11 So, after they closed the grant down, they go and
- look, how do we justify what we did? And now we're going to 12
- 13 take every piece of paper you have, and we're going to show you
- 14 that you spent your money wrong.
- 15 Well, it reminds me of an old story in jolly old
- 16 England when there were lords and barrons and bishops, and this
- 17 baron was riding through the forest, and he noticed that on a
- 18 number of trees there was an arrow, and there was a circle
- 19 drawn around the arrow, a bulls-eye, and he was really
- 20 impressed. So he called his knights in, and he said I want you
- 21 to find that archer, I want to make him the knight of archery
- 2.2 of my fiefdom. And they went and they scoured the forest and
- 23 they found this fellow who was the archer. The barron invited
- 24 everybody in the area to come and see his new knight of archery
- perform. There were hundreds of people, and the archer, they 25

put out a target, a hundred yards, 200 yards, the archer fires, 1

- 2 misses the target by a mile. He tries again, misses again.
- They now move the target in, he still can't hit the target. 3
- 4 Now, the barron is pretty embarrassed by this showing,
- 5 so he says to the archer, before I behead you tell me that you
- are not the man who fired those arrows that were in those 6
- 7 trees. He said, I am, sire. He said, well, how were you able
- 8 to hit all of those bulls-eyes? He says, sir, I stood on the
- edge of the forest, I fired my arrows into the air, and 9
- 10 wherever they landed I drew a circle around it.
- And that's what they did here. They have no 11
- 12 bulls-eyes. They don't have one. They put an exhibit up
- 13 during summation; they don't check anything out. It is
- 14 absolutely amazing, they check nothing out. Dr. Karron ate at
- IHOP. Wow, check your American Express bill, see if IHOP is in 15
- 16 Virginia, right near Washington D.C., where he goes on business
- 17 to visit the grant people in Maryland and Virginia and
- 18 Washington D.C.
- 19 Ask yourself -- and I say to you the arrows are the
- intent here -- whether or not he intended to do anything wrong. 20
- 21 Are they kidding, you can't go on a meal? Do you think that
- 2.2 Riley paid for her own lunch? The government paid for her own
- 23 lunch when she went out with Dr. Karron, Hayes and Benedict.
- 24 Who do you think paid for her lunch? She came in from Atlanta.
- You don't think she gets reimbursed for her lunch? You don't 25

1 think people have a right in business if they have a business

- lunch to deduct it?
- Riley even deducted the lunch she went to. She 3
- 4 deducted the cost of the lunch she went to with Dr. Karron,
- 5 Benedict and Hayes. And she disallowed his lunch and every
- other meal for that matter. 6
- 7 I guess the old Brooklyn expression "you throw enough
- 8 against the wall, something is going to stick" is what this
- case is all about. 9
- 10 The prosecution started this case in 2003. When did
- 11 they speak to the witnesses? Did the prosecutors in this case
- speak to one witness before April or May of 2008? It's a 12
- 13 simple case. We got the GPS, we have different things, we've
- got roach killer. 14
- 15 So, I submit to you respectfully that you can't use
- 16 suspicion -- as they have -- or speculation to convict
- somebody. Dr. Karron did not use the NIST ATP money as his own 17
- 18 piggy bank.
- 19 The question is even if it's nonallowable, at the end
- 20 of the day does that equal criminality?
- 21 Remember, there was a whole audit process, an entire
- 2.2 audit process where they had this agreement resolution that was
- 23 never afforded to Dr. Karron. In other words, under the system
- 24 if after Riley does her audit, you then can appeal the audit to
- the ATP NIST people to see whether or not they are going to 25

1 allow those expenses. They never had that process. So, you

- 2 don't know as you sit there now -- and you can't speculate I
- submit to you -- whether or not ATP would have approved it. 3
- 4 I think sadly -- and I'm going to get into this with
- 5 Benedict -- that they probably would have been forced not to go
- along with it for reasons that I will talk about. 6
- 7 Also, you know, it's interesting, the government said
- 8 in their opening on page 39, "Finally, you will be seeing a
- number of documents that will show you the fraud in clear black 9
- 10 and white, and in particular you will see an analysis of the
- defendant's personal bank account and bank accounts at CASI." 11
- 12 Do you remember when I cross-examined Riley? She
- 13 never saw the defendant's personal bank account, she never
- looked at his personal bank account. She didn't give a darn 14
- about his personal bank account because she was looking to put 15
- 16 circles around arrows. So, she has this chart that they put up
- 17 on the board, Government Exhibit 115, and she has no
- 18 contributions. And when does she find any contributions? In
- 19 2004, after the grant is stopped and she is looking over.
- 20 By the way, Ms. Riley from the OIG, what credit cards
- 21 of Dr. Karron's did you happen to look at? His American
- 2.2 Express card.
- 23 And of course you disallowed everything on his
- 24 American Express card that he used for business.
- 25 Basically.

- 1 What about his Mastercard?
- Well, I never looked at his Mastercard. I never saw
- his Mastercard. I didn't ask for his Mastercard. I didn't 3
- 4 look for his personal accounts, I didn't look for his
- 5 Mastercard.
- The defense put in the Mastercard, and when you look 6
- 7 at the Mastercard you are going to find that on the Mastercard
- statement in October of 2001, March of 2003, you are going to 8
- 9 see Datavision, the same thing you see on the American Express.
- 10 In other words, he is spending his own money on grant-related
- items with his own credit card. That's what he's doing. All 11
- right? And you are going to see that in a number of different 12
- areas. You are going to see that -- you will see all the 13
- 14 restaurants that he went to and charged to his Mastercard.
- Does this show you he is a man that is attempting to keep his 15
- 16 business expenses separate and apart from his personal
- 17 expenses? Do they have expenses every day on his American
- 18 Express that he was eating out and charging it to the
- 19 government? No.
- 20 You know from the evidence that he has backup in his
- 21 computers of every single thing he ever spent. And we showed
- 2.2 you the receipts just as an illustration of the lunch that he
- 23 had with Riley. And he signed it, and he signed it, and
- 24 Benedict signed it, and it's in evidence for you. Because he
- was attempting to do everything honest. He did everything he 25

- 1 could. But they draw the circle, IHOP, Starbucks. Were they
- there when things were discussed? Did they care enough to get
- the backup to his expenses? No. 3
- 4 So we brought you Ms. Farnsworth. Just to show you an
- 5 illustration, imagine this. I think this is 125. They see
- something. They finally did some investigation. They saw --6
- 7 when they grabbed everything in Dr. Karron's apartment, I think
- it was in 2006 the testimony is, they cleaned out his 8
- apartment, they found this. Well, it must have been everything 9
- 10 he has. Everything he has, everything he owns must have been
- bought with ATP money, so we will take everything including the 11
- 12 shoe rack.
- 13 Then they find in their arrow search, wow, we found a
- shoe rack in this statement, and that must be the shoe rack. I 14
- submit to you that it's not the shoe rack, and you have more 15
- 16 than a reasonable doubt about that. And I submit to you that
- 17 the other thing that was charged was something about ten,
- 18 something with a rack. Do you know if Mason used that as
- 19 material to do construction there? Do you know what it was
- 20 used for? They didn't find it there. Why didn't they find the
- 21 shoe rack that they had on the bill? Because it was used for
- 2.2 something grant related.
- 23 What is wrong with having flashlights? You know these
- 24 computers, you heard about them, they come out, they go behind.
- This is in 2001 and 2002. Computers are a lot smaller now. 25

- 1 And of course computers that Dr. Karron created were big
- 2 things, and so you have flashlights. All of a sudden that's a
- problem. 3
- 4 Big screen. Do you remember there was all that talk
- 5 about Government's 120-A? He has a big screen in the room
- that's used as the CASI headquarters. In the picture you will 6
- 7 see a big screen.
- 8 And a projector. They have a projector, you know,
- like this. And they have a screen like that. And he paid 9
- 10 grant money so that he can make presentations to people of what
- their project is and what they're doing. And of course the 11
- 12 prosecution wants you to believe that that's not deductible,
- 13 that's not allowable.
- They also suggest he had too many computers. Who are 14
- they to tell Dr. Karron what he needs to accomplish what the 15
- 16 government gave him \$2 million over three years?
- 17 One thing you know. There wasn't one kick-back that
- 18 Dr. Karron got from buying anything. He didn't sell anything
- 19 that he bought so that he could stick some money in his pocket.
- 20 He had no intention of doing anything wrong.
- 21 And do you know what the blender was used for? And
- 2.2 let's say it wasn't used for grant purposes, so he made a
- 23 mistake. In their world you can't make a mistake.
- 24 How about the fact that Mason testified he did work in
- the apartment, and they want you to think that they improved 25

1 the value of that apartment. That apartment should have been

- worth close to \$700,000. It was sold for what, \$510,000,
- because of all the changes that he made in the apartment. If 3
- 4 one wanted to buy it and move it, it had to be ripped out
- 5 because it wasn't suitable for somebody to live in.
- And what did Mason tell you? Oh, I did some work in 6
- 7 the kitchen.
- 8 Oh, you did work in the kitchen? What did you do in
- the kitchen? 9
- 10 I fixed a cabinet.
- Did you get paid for that? 11
- Yes, I did. 12
- 13 Well, I will show you this check, Mr. Mason. Is this
- the check you got? Is this a CASI check? 14
- 15 No.
- 16 This is a personal check from Dr. Karron, because it's
- 17 a personal expense. So the man with the piggy bank is going
- 18 into his own pocket to pay for things that he understands are
- not allowable under the grant and are personal in nature. 19
- 20 That's what we have here.
- 21 And who are we talking about? We are talking about
- 2.2 Dr. Karron, a man who goes to a meeting, an ATP meeting where
- 23 he is eventually going to get a grant, and he stands up and
- 24 says is there anybody here that can help me? Because I am bad
- with finances and I don't know how to do this stuff. You know? 25

1 This is the guy that they're drawing circles around what he is

- 2 doing.
- And did he destroy one record? One record? No. 3
- 4 is their complaint? Springs testified he went into the
- 5 computer and he changed something. What did he change? He
- changed whether or not it should be allowable or not. He 6
- 7 didn't change an invoice. He didn't change what was marked on
- the check. 8
- Anybody except for Riley could look at the checks.
- 10 Imagine an auditor never looked at the checks, never did a bank
- reconciliation to decide what he spent. 11
- 12 Every check you saw had a memo on it. You heard Dr.
- 13 Karron wouldn't sign a check unless he had backup to it, there
- was an invoice. All of that was in the computer. Is this a 14
- guy looking to do something wrong? 15
- 16 They make this broad brush, he changed something
- 17 therefore he must have changed it to do wrong. No, it's
- 18 arguable. He doesn't have to agree with his accountant. He
- 19 doesn't have to agree with his business manager. He doesn't
- 20 even have to agree with the grant people. At the end of the
- 21 day, if they tell him it's not allowable, he has to pay the
- 2.2 money back. That's the system. That's the system.
- 23 This man hid nothing. How do you steal when you don't
- 24 hide anything and you make a note of everything you do, and you
- never ask anybody else to do anything wrong to hide anything 25

- 1 because it's all out there? Every checking account he has a
- 2. different color check. He posted the records originally. Then
- he hired people to do that, to scan the stuff in. 3
- 4 And in their opening they suggested that he did
- 5 something that was improper in filing the records. And you
- found out when I cross-examined Springs and in one of his 6
- e-mails about what's called an audit trail. You can go back
- 8 into the computer if you want to prove guilt beyond a
- reasonable doubt and show what person made what change, and 9
- 10 then argue from that that they had guilty knowledge or a guilty
- 11 mind.
- 12 Don't argue -- I have too much respect for your common
- sense to think you won't credit it. The bottom line is how can 13
- 14 you argue and have testimony he changed something without
- knowing what he changed? How could you say that? There is no 15
- 16 evidence at all. The man had backup; he had audit trails.
- 17 I submit to you that the e-mails are the DNA in this
- 18 case, and they will prove, as I said in my opening, that Dr.
- 19 Karron is innocent.
- 20 The government is going to argue, and they have
- 21 argued, that without prior approval he misapplied the funds.
- 2.2 And I submit to you that the evidence is otherwise.
- 23 The third element is during a one-year period the
- 24 defendant intentionally misapplied money. I submit to you he
- had the tacit authority from the grant to revise any expense 25

1 that he had, that this grant permits and it's understood that

- 2 you could change things as long as you are doing it for the
- purpose of succeeding on the project. 3
- 4 If you have a reasonable doubt whether or not that was
- 5 implied by everybody that Dr. Karron met, look at this 10
- percent rule. He can move \$80,000 anyplace he wants in that 6
- 7 budget as long as he doesn't go over the \$800,000 for the year.
- 8 Element four provides that the money was intentionally
- misapplied. I submit to you that no money was intentionally 9
- 10 misapplied, because you knew and you heard a lot of testimony
- about budget revisions, budget amendments and what have you. 11
- 12 And the fact -- even if the findings on the audit were
- 13 accurate -- which I submit they were not -- by Riley, it still
- would not become criminal because there was no intent to do 14
- 15 anything wrong in misapplying the funds.
- 16 Now, this is not IBM. They do not have an HR
- 17 department. This is a ma and pa science company, and it was
- run that way with a lot of inefficiencies in the finances but 18
- 19 not in the science. And apparently the people at ATP NIST were
- 20 more interested in the science than in the finances.
- 21 And I have been wondering, wondering for a long time
- 2.2 now why are we all here, how did this case get so out of
- 23 control. Well, what you learned at this trial is that ATP
- 24 doesn't exist anymore. The project that had \$60 million --
- which to you and I is enough money for me to buy a couple of 25

1 lotto tickets every week in the hope of acquiring it -- in the

- 2 world of government this is not a lot of money, it's not a lot
- of money. But who gets the \$60 million? Two thirds of the 3
- 4 grants are given to people like Dr. Karron, who need start-up
- 5 money. They don't have money like IBM got a grant for \$2
- million; they also got a grant for \$50 million, but put that on 6
- the side.
- And there is something that smells here, it really 8
- smells bad. And I could be dead wrong, and if I am, and if you 9
- 10 don't feel this way, you reject it. I hope you will credit
- 11 some of the other things that I present to you.
- 12 The government wanted to get rid of this project --
- 13 I'm not talking about the prosecutors here. They get the case
- from other agencies -- they didn't like the idea of \$40 million 14
- going to little guys. Why not give it all to the IBMs and the 15
- Halliburtons of this world? Hey, we found Dan Karron. 16
- better than this guy, who is a cook but he is no crook? And 17
- 18 that's what happened here. And now we look at him and we
- 19 speculate what he did.
- 20 And I submit to you that when you evaluate all of the
- 21 evidence, and you see his payroll checks which I put into
- 2.2 evidence as P-1 through P-6, where his total amount for the
- 23 year is about \$35,000. Ask yourself, he gets \$175,000, how
- 24 does he only have \$35,000? Because he took an advance of
- 75,000 to begin with that's not reflected in a check because he 25

- 1 didn't get a check for that \$75,000, it was a wire transfer.
- He wired it into an account, into his CASI account the evidence
- is, and so, therefore, he got net \$110,000. And that's where 3
- 4 his money was. And he commingled, and there was no rules he
- 5 couldn't comingle. He put the NIST money with his own money,
- with his CASI money. Oh, CASI had no other business, but they 6
- 7 got \$110,000 cash for this man. Can't they spend it any way
- they want? 8
- And then, yeah, whenever the bank balance -- if you go
- 10 through all the bank balances you will see that whenever they
- get low, who comes up with money? Dr. Karron. When there is 11
- no money at all around, whose credit card is used? Dr. Karron. 12
- 13 Oh, he is a bad guy. You know, we set up this whole system,
- 14 and we told him he can only sign checks, he can't spend any
- money without approval. And we had this PayPal system in 15
- 16 effect. And what does Dr. Karron do? And these are in
- 17 Government Exhibit 110, I believe, they have the PayPal
- records. Obviously up until March 1, '03 Benedict is not 18
- 19 there, so he has one, two, three, four transactions in PayPal,
- the largest of which is \$476.55. He bought 12 items of 20
- 21 something that's in PayPal, in other words \$40 an item, he
- 2.2 spent \$13.20, \$168.16 and \$283 for every item, \$168 is for 11
- 23 items.
- 24 Do you think that things were happening at CASI
- related to the project that he needed to do something quick to 25

1 get a couple of dollars? Oh, he violated, he doesn't listen to

- 2 anybody, he doesn't do anything, he is arrogant.
- I grew up in Bronxville, Brooklyn, and my dad worked 3
- 4 for the IRS, and he used to say, son, don't make a federal case
- out of this. You know, my father was a smart man. I didn't 5
- know what he was talking about, but I sure have learned. 6
- 7 Your job, your job is to evaluate the evidence, to
- 8 evaluate the witnesses who come before you. And the one thing
- the defense has -- the only thing they have -- is the right of 9
- cross-examination. It's like a prod. Somebody says something, 10
- 11 and you prod them a little bit to see whether or not what they
- 12 say makes sense, whether or not they have backup for it,
- whether or not it's believable beyond a reasonable doubt. 13
- 14 I don't stand up here and tell you who lied about what
- or said what. I leave that to your evaluation. All right? 15
- 16 You take the direct, you take the cross-examination. And the
- 17 beautiful thing in our system of justice is that we have a
- 18 right to defend our clients vigorously in this great country,
- 19 and I hope to god that none of you ever need that kind of
- 20 vigorous defense. And next to Dr. Karron, the person I feel
- 21 sorriest for in this whole case is Bob Benedict.
- 2.2 You have to ask yourself, how does that happen? How
- 23 does this happen? Here is from all you can see about the man's
- 24 background a truly decent guy. He volunteered to help Dr.
- Karron from day one in this project for nothing. He came 25

1 onboard for \$60 an hour, which you can figure out is a hell of

- 2 a lot less than Gurfein was getting. Sure.
- And this is a letter, this is an e-mail that's in 3
- 4 evidence as Defendant's U, and this is I submit to you part of
- 5 the DNA that I am talking about. And this is a letter, an
- e-mail he sends to Dr. Karron on April 19, 2004, and the grant 6
- 7 is stopped since June. He is out of the loop since about
- 8 August or September or October, and you can just imagine how
- this thing is killing him, what happened at CASI and that the 9
- 10 grant was stopped. And he says, "RE: Specific instances of
- 11 Hope Snowden ignoring requests, or not providing documentation
- 12 for understandings, Joan's bungling upsetting Hope; Joan making
- 13 certain Hope acknowledged all errors as due to Dr. K." He goes
- 14 on. That was the subject.
- "As you know, one of my first acts was to assist in 15
- 16 the submission of the CASI response to the multi page
- 17 questionnaire tossed at CASI. This response included a budget
- 18 amendment along with a request to have me acknowledged as your
- 19 administrator.
- 20 "Hope ignored both requests. We never received any
- 21 acknowledgment, verbal or in writing, that our
- 2.2 response/amendment request would or would not be approved. As
- 23 such, I was never approved as the administrator and Hope would
- 24 not answer or return my calls. I was a "nonparticipant" and
- therefore someone to be ignored. 25

- 1 "The fact that I had eight years experience with ATP
- 2 projects, as an administrator, without any audit problems, and
- a litany of ATP references, which Hope never bothered to check, 3
- 4 didn't appear to be viewed as a positive addition to the
- 5 project.
- "The rare communications we did receive were addressed 6
- 7 to Dr. Karron or Peter Ross, ignoring the fact that ATP was
- 8 informed Peter was no longer involved.
- "It was VERY FRUSTRATING and apparently in direct
- 10 opposition to what would have been in the best interests of
- both CASI and NIST. 11
- 12 "Ms. Snowden appeared to be a bureaucrat, totally
- disinterested in the success of the project and only interested 13
- in whether CASI dotted all the Is and crossed all the Ts, 14
- associated with her rigid understanding of the ATP and other 15
- 16 relevant federal guidelines. She consistently ignored CASI
- 17 attempts to provide service which would help the project and
- her in the meantime. She believed CASI was out of control from 18
- 19 the beginning and the number of personal changes and amendment
- 20 requests proved her right, in her mind. There was no weight
- 21 given to the possibility that changes were driven by Dr. K's
- 2.2 lack of ATP experience or assistance offered to help Dr. Karron
- 23 grapple with the ATP quagmire.
- 24 "ATP is as responsible for the state of the CASI
- 25 project as anyone.

1 "Sorry, but that's the best recollection I can 2 muster."

How does this man who wrote this letter come here and 3

testify before you the way he did? Ask yourself that. How 4

5 does he come here and initially say he knew nothing about Dr.

Karron advancing after the grant was suspended in June, June 6

7 27, '03, that he knew nothing about Dr. Karron advancing money?

How could he say that? I showed him an e-mail where he said 8

that Dr. Karron had put \$47,000 in, 47K and that there was 21K 9

10 in cofunding. He denied that we ever had any equipment issue

11 under cofunding. How does that happen to a guy that you look

at, who in October, who in 2004, said just the opposite of what 12

13 was going on than what he said on the stand?

14 I really think at the end of the day Dr. Karron is

going to get a call one day from Bob Benedict apologizing. 15

16 Here is a man who worked for IBM for over 20 years. You heard

17 from our character witness, these people get humongous

18 pensions. They got stock probably when IBM was worth ten cents

19 and probably their shares are probably worth a million dollars

20 a share that they have. How does a man like this turn against

21 Dr. Karron this way and get embraced by the prosecution?

2.2 Well, you know, this is the last thing I will say to

23 you about my dad. I told you he worked for the IRS. I once

24 got him, through a friend of mine who managed a Ford

dealership, a car. I got a call from this friend of mine and 25

- he is all upset. I said, what's the matter? He says, your 1
- 2 father. I said, what do you mean? He says, I got back from
- lunch, a Mr. Rubinstein from IRS called; I almost lost my 3
- 4 lunch. It was my father, he was having problems with the brake
- 5 light.
- 6 Well, when the prosecution shows up at your door and
- 7 you are the guy who submitted documents, all of a sudden you
- get yourself on the team, and it's tragic. He tells you --8
- here is a responsible businessman -- oh, I have a CASI e-mail 9
- 10 but I never accessed it, I never look at the e-mails at CASI,
- 11 you see, I have a different e-mail.
- 12 Well, when my wife and I are on vacation, she gets her
- 13 e-mails from the house where we are. I mean who doesn't look
- 14 at their e-mails? People are anal about this stuff. You mean
- you are the manager, the business manager of CASI, and you are 15
- 16 not accessing your e-mails, that maybe you have e-mails in your
- 17 other account wherever you are? Please, please.
- 18 Now, the judge is going to tell you that witnesses are
- available to both sides. And you can find -- the difference is 19
- 20 that the government has the power to give immunity to people,
- 21 they can make deals with people, they can do a whole lot of
- 2.2 things. And of course they have the burden of proof beyond a
- 23 reasonable doubt. So, you could say that if they would have
- 24 called this witness, and if we would have credited this
- witness, we would not have a reasonable doubt, because in this 25

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1 case Joan Hayes, who we only heard the name but never saw, is

- 2 not a person whose testimony is cumulative.
- 3 The government relied on Joan Hayes throughout this
- 4 entire case, and you never got an opportunity to see her, and
- 5 we never got an opportunity to ask her questions.
- 6 You know it's interesting, Benedict and Hayes, makes
- 7 you think of Benedict Arnold, right? Here is the person who is
- 8 your accountant, who inappropriately becomes your auditor
- 9 because people tell you you can't wear two hats.
- 10 Do you remember Benedict? I asked him, did you ever
- 11 see Hayes' audit? Remember, she was supposed to submit the
- 12 audit. She got a 90-day extension in October of 2002. You are
- 13 supposed to submit the audit. She got a 90-day extension until
- 14 December 31, 2002 for the first year, and in August of 2003 Bob
- 15 Benedict hasn't seen the audit and Dr. Karron hasn't seen the
- 16 audit. Wow. You know who saw the audit? Riley, Hope Snowden.
- 17 They saw the audit. And the testimony is in the record, Riley
- 18 saw the audited before she went to make the personal visit, the
- 19 site visit. Before she closed the project down she used Joan
- Hayes' numbers.
- 21 Where are those numbers? I asked Riley, do you have
- 22 any numbers? Do you have any audit sheets? Do you have any
- general ledgers showing us how you base this?
- No. No, I used Joan Hayes'.
- 25 Well, where are they? What did she give you? What

was her motivation, Hayes's motivation? She clearly poisoned 1

- 2 everybody at ATP against Dr. Karron.
- Could you imagine, they have a man, Dr. Karron, who 3
- 4 they know is not a business manager, and he gets a guy like
- 5 Benedict to be his business manager and they won't approve him.
- They leave Dr. Karron without a business manager from the time 6
- that Peter Ross leaves until I think the date on the e-mail was
- 8 in early March, that Benedict comes aboard, and they won't
- approve him. Why won't they approve him? Why won't they 9
- 10 approve a revised budget? Why won't they do anything? Why are
- 11 they stonewalling this? Ask yourself: Who came in the middle
- of the night to talk to them? Same people that came and took 12
- 13 everything including the shoe rack out of Dr. Karron's house.
- THE COURT: You're a little over 45 minutes. 14
- MR. RUBINSTEIN: Halfway there, Judge, but thank you. 15
- 16 Who wrote the books? Whose books were they that they
- 17 used? She and Frank Spring created whatever books there were.
- 18 What did they submit?
- 19 THE DEFENDANT: Excuse me. I have to go to the
- 20 bathroom. Do I have your permission, sir?
- 21 MR. RUBINSTEIN: Judge, I will keep going.
- 2.2 THE COURT: Somebody was saying something.
- 23 MR. RUBINSTEIN: Yes, Dr. Karron needs a personal
- 24 moment, but I will keep going.
- 25 THE COURT: Do you want to break now?

Summation - Mr. Rubinstein

1	MR. RUBINSTEIN: Only if the jury does, Judge. I have
2	no problem with excusing him on the record.
3	THE COURT: You said another 45 minutes.
4	If he needs a break, let's take a very short break.
5	The jury is excused for a short break.
6	(Jury not present)
7	MR. RUBINSTEIN: We might as well step out ourselves,
8	if you don't mind, Judge.
9	THE COURT: Well, all right, but come right back. I
10	have to have some time for the charge. Leave me a little time,
11	Mr. Rubinstein.
12	(Recess)
13	THE COURT: All right. Let's bring the jury in.
14	I hope you won't be too much longer, Mr. Rubinstein.
15	MR. RUBINSTEIN: I'm trying not to.
16	THE COURT: Because I have a rebuttal, then I have to
17	have a little room for my charge, and we've got to have lunch.
18	(Continued on next page)
19	
20	
21	
22	
23	
24	
25	

THE COURT: All right, please be seated. 1

- Mr. Rubinstein.
- MR. RUBINSTEIN: Thank you, your Honor. 3
- 4 Hayes is -- a letter in evidence, government exhibit
- This is after she's cooperated with the government from 5
- 6 God knows when. I submitted figures that she created to get
- 7 this grant suspended. 51, she writes a letter, or Dr. Karron
- 8 writes a letter to Hayes, so she's still in communication with
- 9 Dr. Karron, even though you know from e-mails --
- 10 MR. KWOK: Objection, not in evidence.
- MR. RUBINSTEIN: Oh, I'm sorry. Okay. 11
- THE COURT: Exhibit 51 is not in evidence. 12
- 13 MR. RUBINSTEIN: It's in their book.
- 14 So I submit to you that, that you have a lack of
- 15 evidence just on the absence of Hayes.
- 16 And you know from the testimony that Benedict had no
- 17 idea that Hayes had given the audit report to Riley prior to
- 18 the meeting. Imagine, she went to the meeting in June and
- 19 was -- in June they had the meeting. Riley came to the site
- 20 visit and Benedict, Hayes and Dr. Karron were present -- that's
- 21 the lunch that is in evidence. And she stayed aboard, because
- 2.2 she kept feeding, feeding numbers to Benedict, not to Dr.
- 23 Karron. Dr. Karron's a scientist. You know, he didn't create
- 24 these numbers. And we know that Benedict kept giving
- numbers -- I mean Hayes kept giving numbers because we have 25

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- 1 those amended financial status reports that were filed
- 2 August 13, 2003. And Benedict tells you where he got those
- 3 numbers from. And you also know that Benedict was paid -- that
- 4 Dr. Karron paid after the grant was suspended -- he's not
- 5 supposed to, but he wants -- he wants the project to work. So
- 6 he's paying expenses. He puts -- you know about \$47,000 in
- 7 cash that he refinanced -- it's in the e-mails -- he refinanced
- 8 his apartment, put the money into the grant to keep the grant
- 9 going. Is that -- does that sound like somebody who is looking
- 10 to intentionally misappropriate funds? This is a high risk,
- innovative technology that he's working on that requires
- 12 changes as you go along. Everybody tells you. And mistakes in
- 13 science, I submit to you, are merely experiments that didn't
- 14 work out. Those are mistakes. So you keep changing things.
- 15 You need more workers. So he gets volunteers. You heard about
- 16 all the people that are in the apartment. He gets students.
- 17 What are all these people doing there? They're all working on
- 18 a project. Does anybody suggest that he's not working on a
- 19 project every minute that he has?
- 20 And you know that the mantra of ATP is, it's your
- business, your money, do whatever you want and we'll back you
- 22 up because we're interested in science here. But then the bean
- 23 counters come in and they start drawing circles around every
- 24 number to suggest you're doing something wrong. And that's
- 25 what we have here. Imagine leaving this company without a

- 1 business manager.
- Now, you know that the grant is a fungible thing,
- because exhibits four -- do we have that exhibit? I think it's 3
- 4 page 11. It tells you you could seek a revision at the end of
- 5 the year. Not the end of the year of the grant, which is
- October -- in this case September 30th, 2002, but at the end of 6
- 7 the year. And all of these revisions that were submitted by
- Ross and what have you, related to 2001. In other words, 8
- you're allowed to go backwards. You don't need approval 9
- 10 before. You know, for every rule that they have, if you look
- 11 through these books, you're going to find a rule that says the
- 12 opposite. And they expect people to read a couple of hundred
- 13 pages of information. Somebody's giving you a check for
- 14 \$800,000, you sign on the bottom line and you're not worrying
- about the details. You know you're not going to do anything 15
- 16 wrong. Do you read everything that the credit card company
- 17 sends you? They send you these things about changes in your
- 18 credit card stuff. Got to make an admission, I don't.
- 19 Do you have that?
- 20 MR. DiCENZO: No.
- 21 MR. RUBINSTEIN: All right, we'll find it and put it
- 2.2 up later.
- 23 Now, so that's what Dr. Karron understood. He
- 24 understood that he could have the grant changed and he could
- have the lines changed. And why wouldn't he? Doesn't it make 25

a heck of a lot of sense to you people? But no, they disallow 1

- 2 Winter's salary. Winter worked in the office. Not only
- disallowed her salary, they also disallowed she got child care. 3
- 4 They didn't like that. So you don't have salary, you're not
- 5 entitled to fringe benefits, and also you shouldn't have child
- 6 care anyhow. Who are they to say what fringe benefits your
- company should give you? Who are they? They tell you, oh, you 7
- 8 should have a -- something in place. You need a written
- manual. Why do you need a written manual for? Nobody's going 9
- 10 to look at it. Nobody's going look at it. They don't review
- the written manual. You don't have to submit it. Nobody asked 11
- 12 for the manual. You're allowed to make fringe benefits.
- But we do have a written manual. And who created it? 13
- Bob Benedict. He created it. We put it in evidence. And the 14
- government gets up on redirect and says, well, wasn't that July 15
- 16 2nd after the grant was suspended? What do you think, he made
- 17 that document on July 2nd; he start working on it on July 1st
- 18 and he stayed up all night? Come on. You have e-mails back in
- 19 August of '02 relating to this lawyer Miller, who is apparently
- on the board of CASI, asking about documenting it. But the 20
- 21 reality is in this grant, where nothing's written in stone, if
- 2.2 you do what's reasonable and you did it before, you know you're
- 23 not going to have any trouble.
- 24 But then you get an auditor -- I mean I leave to it
- you. You judge the witnesses. Riley. She disallows part of 25

- 1 Dr. Karron's salary. She disallows it. He didn't spend
- 2 100 percent of time on the grant. Well, what if he spent 80
- hours a week? If he spent an hour, two hours on something 3
- 4 else, afterward, those 80 hours, uh-uh. Let me ask you; ATP
- 5 approved \$175,000 for Dr. Karron. Did they expect him to get a
- \$175,000 in salary? Of course they did. They didn't expect 6
- 7 the bean counter to come along and say you're not allowed to
- take the whole 175. And that would've been resolved in an 8
- audit resolution. 9
- 10 Then we talked about Mr. Gurfein. Gurfein got
- 11 \$100,000, net -- I'm sorry, gross salary. So, well, 25 percent
- of his time wasn't spent on ATP, so we took off 35 percent. So 12
- 13 I showed her the exhibit H. And did she ever answer it? She
- 14 gave you double talk that you haven't heard since you heard
- comedians that could double talk. 15
- 16 The amended budget that's approved, which is part
- 17 of -- which is the defendant's H, it shows Gurfein gets a
- 18 133,333, he devotes 75 percent of his time, and that equals out
- 19 mathematically to \$100,000. Well, no, it's 75 percent of a
- 20 hundred. Well, no no. She's getting 133. What's 75 percent
- 21 of 133? They say numbers don't lie.
- 2.2 You have witnesses like Hope Snowden. She tells you
- 23 about she discussed the \$75,000 that Dr. Karron took as an
- 24 advance, with Agent Garrison. And when I cross-examined her, I
- showed you that the first time, and she conceded it, that she 25

- 1 ever spoke to anybody about the \$75,000 advance, was on
- 2 September 8th, 2003. And I confronted her with Government's
- exhibit 3504A and she agreed with that. All right. So 3
- 4 whatever reason, she was stonewalling Benedict and the revision
- 5 provisions. Government worker, and she's taking the government
- line. All right. 6
- 7 Now, I asked her about these preaudit, pre-grant
- 8 costs, and she said you do that at your own risk. So, does Dr.
- Karron -- so can you get ATP to agree to let you use your 9
- 10 preaudit spending -- pre-grant spending, the money you spent
- before October 1st, 2001, and you can take that as an allowable 11
- 12 expense; is that something you could consider?
- 13 Now, but she wants you to think that she's, she's on
- 14 top of what's going on. Nobody cared what was going on, as
- long as science -- remember they had visits? They had site 15
- visits, and Lide told you, yeah, they were progressing on the 16
- 17 science. That's what they cared about at ATP. That's what
- they should have cared about. They should have cared about 18
- 19 that.
- 20 Now, the mantra was, no good project goes unfunded.
- 21 THE COURT: An hour and 15 minutes.
- MR. RUBINSTEIN: Pardon, Judge? That's not so. We 2.2
- 23 started at 45. I cannot possibly have talked a half an hour.
- 24 You're putting in the recess on me, Judge. That's not --
- 25 THE COURT: I am --

MR. RUBINSTEIN: That's not fair at all. I didn't 1

- 2 want a recess.
- THE COURT: No, I know. I haven't stopped you yet. 3
- 4 I'm just giving you a, just giving your time line --
- 5 MR. RUBINSTEIN: All right.
- 6 THE COURT: -- so you know where you are.
- 7 MR. RUBINSTEIN: Judge, you know I love you, but I got
- 8 to go, I got to go.
- In exhibit 10B in evidence, this is what it says, this 9
- is on the budget that is part of what you submit. They say: 10
- 11 We -- this is government talking -- we recognize that
- 12 unexpected events occurred frequently in R&D, research and
- 13 defendant projects, and that budgets may be needed to be
- changed as the project proceeds. Okay. That's all you have to 14
- know about the budget. It's not written in stone. It's a 15
- 16 living breathing thing. And if you look at Exhibit 4, page
- 11 -- it's not in your book -- it says, you can revise the 17
- 18 budget at the end of the year. And that's what he did, and you
- 19 can give 10 percent anyway you want.
- 20 Now, the smoking gun, rent. The smoking gun in this
- 21 case. When was the rent paid for? CASI collected rent. Dr.
- 2.2 Karron collected rent from CASI since 1995. There's no
- 23 evidence that CASI was not paying rent, and that Dr. Karron
- 24 wasn't showing it on his income tax returns for the whole time
- 25 of the grant.

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1 You know that there was a period where he didn't have 2 work and the rent went unpaid so that he was owed the rent. If he owed a bank loan and he took money and paid off a bank loan 3 4 that he owed before the grant, what would they be saying? So 5 we have this issue of rent. He feels, he feels that he should be able to collect rent from ATP. Why? His is a unique 6 7 situation. He only has one project. They called direct and 8 indirect costs. He says everything is direct, because I have 9 only one project. These other places have more than one project so they can't say how much of the rent is the project. 10 So let's follow it. And everybody is telling him, everybody's 11 12 saying you can't do it, you can't do it. He keeps trying, he 13 keeps trying, he keeps trying. Finally, near the end of 2002 it dawns on him, he's 14 not getting the rent. Now, a decent accountant then reapplies 15 16 all whatever he spent for the rent that they adjusted. 17 what the accountant does, they go into your credit card, your 18 this, your that, they decide what is attributable to you and 19 what isn't, what is personal. 20 He now has this brilliant idea. He's a bright guy; I 21 am going to move out of the apartment, I'm going to move to 2.2 Connecticut to my friend Windy's house, I'm going to pay her 23 rent and then I'm not using the apartment for my house and I 24 could deduct it. Great idea. So he goes, he makes a contract with Windy. He gives her 2,000 in advance. He's all set to do 25

- 1 it, when they realize this is ridiculous. I'm going to be
- 2 going up and back from Connecticut. Probably realize, you
- know, if I use my GPS going up and back from Connecticut it may 3
- 4 not be a business expense, you know, it may not be allowable.
- 5 So he decides not to move into Windy's. And what does he do?
- What does he do, ladies and gentlemen? He doesn't take rent 6
- 7 any more. There are no checks for rent in 2003, not in this
- 8 grant. So once it finally went through his head that you can't
- do it, it's not allowable, this arrogant guy, according to 9
- 10 them, listens to nobody, stopped taking rent.
- 11 Now, you're going to look at the credit cards, you're
- 12 going to look at the Master Card. You're going to see how
- 13 often he had meals, where they were, what places. You know
- that he took Lide and Jane Orthwein to lunch at Benjamin's. 14
- You see he goes to Benjamin's other times. You'll see these 15
- 16 restaurants and what have you. All right.
- 17 You're going to consider the audit, or the lack of
- 18 audit. I submit to you that 110, Government's 110 and 111,
- 19 which were created long after the grant was suspended, after
- 20 they made the final report, after they made the final report in
- 21 March of 2004, then she went and audited it. Then she created
- 2.2 records to justify what she had done before. There was
- 23 probably about 45 checks in this whole reconciliation that they
- 24 never did. So ask yourself, are you going to rely upon any of
- the numbers that Riley created. 25

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1 Now, I'm going to skip a whole bunch of stuff. I'm 2 going to go to August 13, 2003. And August 13th, 2003 -- oh, by the way, rent and utilities are not permitted. They're 3 4 indirect costs. You know from the testimony in this case that 5 CASI was approved to take off, to deduct utilities, a portion of the utilities. Because you'll see the e-mails and you'll 6 7 see that in the exhibits they were allowed to take off electric 8 \$7600, right. Why? Because it's an indirect cost. Well, how did you get it? Because it's negotiable. They submitted the 9 10 bills showing that the increase in electricity, due to the equipment, showed a rise to the extent that they felt the grant 11 people felt that Dr. Karron was entitled to reimbursement for 12 13 on his. When you look at the book and you'll see that October 14 19th, 2002 was the last rent payment made to Dr. Karron, okay. 15 \$2,000. And only one rent payment was out of NIST. And I 16 submit to you that they had authorized fringe benefits. They 17 were authorized 110,000. Who is the person that is permitted 18 to tell you, after you've been authorized to spend 110,000 and 19 you can't spend 110,000? Who? And they deduct your payroll 20 tax -- they deducted your -- reduce your salary so now you 21 couldn't take your payroll taxes. You got a salary. So now 2.2 they come up with a figure of \$547,000 which is -- that's 23 criminal. 24 Now, I want to get, because I -- did anybody say that

these medical expenses weren't deductible? No. Their argument

25

is well -- or weren't legitimate? No. Their argument is that 1

- 2 they -- there was no plan in place. And I submit to you they
- didn't need a plan. They had a plan. That's the way they did 3
- 4 it. That's the way they always did it. And that even Benedict
- 5 said that you can use the matching costs, you could use your
- own equipment. And there's no question that Dr. Karron had 6
- 7 equipment in his place when he started this grant.
- But I want to go, because I told you, to August 13th 8
- because I'm -- of '03, and this is the setting. Bob Benedict, 9
- 10 these are -- there are exhibits in evidence Government's 40
- 40A, 41, 41A, 42, 42A, 43, 43A. These are the financial 11
- reports, quarterlies. Remember, they had to submit quarterly 12
- 13 reports. And low and be hold on August 13th, 2003 after the
- grant is suspended, Bob Benedict prepares these amended 14
- financial reports. Whose figures does he use? Obviously Joan 15
- 16 Hayes. He suggests that Dr. Karron saw these, approved them
- 17 and what have you. I'm going to prove to you, beyond any
- doubt, that that's not true, just not true. A, you're going to 18
- 19 see from the Master Card expense records in evidence, as
- defendant's ZZZ-1 that -- where you're going to find that all 20
- 21 kinds of medical benefits were paid on behalf of Dr. Karron.
- 2.2 And you're also going to find that all kinds of equipment,
- 23 including to Elliott -- I'm sorry -- Elliott Medical Group,
- 24 you're going to see Dr. Brants, you're going to see Kips Bay
- Optical, all of this is paid on the Master Card. Should he get 25

credit for that? I submit he should under his medical benefits 1

- 2 plan.
- You're going to find, when you look at the Master Card 3
- 4 bill, that on August 13th, 2003, Dr. Karron was in Canada.
- 5 You're going to see medical bills paid for on August 13th, 2003
- that were incurred on that day that he was in Canada, because 6
- 7 you give a credit card, they put the date, they put the place,
- 8 and so he's in Canada.
- How do these, that he's supposed to be this criminal,
- 10 this master mind criminal, fudging and making records, and what
- have you -- let me show you -- give me 48, and give me -- I'm 11
- going to show you -- could you put this up, please? This is 12
- 13 48. Now, I submit to you, on the bottom of that is a
- 14 signature. That's not a handwritten signature when you take a
- look at the document. That's a printout signature. It's not 15
- 16 Dr. Karron's. And you see on the bottom of the exhibit --
- 17 THE COURT: The bottom line?
- 18 MR. RUBINSTEIN: Yeah, bottom line. You see it says
- 19 "revised". See it's dated. Can you see from where you are,
- August 13th, 2003? Whose initials are next to revised? I 20
- 21 submit to you if you take a look at exhibit 48 in evidence, Bob
- 2.2 Benedict signature, that Benedict submitted those forms, okay.
- 23 And it makes sense. It makes sense. You think that Dr. Karron
- 24 is checking out these numbers and doing those things? I submit
- to you that this is a case put together with no substance; that 25

86bzkar3 Summation - Mr. Rubinstein

1 Dr. Karron had absolute right, not beyond a reasonable doubt, 2 beyond any doubt, to expect that these expenses that he was charging would be accepted, because he was working his butt off 3 4 for this grant. He was trying to succeed, because that's who 5 he is. He was trying to develop something. And I don't want sympathy. I don't want sympathy that it was a great project 6 7 and maybe we all would've benefited from it. I don't want 8 sympathy from that. I want justice. I want justice. And I want you to look at this case as a scientist working, and you 9 10 see the hours on the e-mails, day or night. If you look at the credit card statements and you see where he is and different 11 states and what have you, and say whether or not this was his 12 13 thought. His thought was to keep -- I submit to you we proved 14 to you his thought was to keep the thing going, to keep it going even after they told him it was suspended, to keep it 15 16 going. Why did he put money in after it was suspended? Are 17 they going to argue to you that he did that as a cover up; that 18 he thought that if he put money in, that this is going to solve 19 his problem because he's involved in this criminality 20 beforehand? Is that what they're going to stand up here? I 21 submit I rely upon you to answer that argument for me. He 2.2 believed all along that this grant would be restored, and 23 somehow if he owed money, he would pay the money back if he was 24 mistaken. He didn't have a problem with that at the end of the

day. He thought he was right. Maybe he was wrong. So he put

25

- 1 money in. He kept people working, and he spent money on the
- 2 grant. And his problem was that he believed the people around
- him. He believed in Hayes. He believed that she was on his 3
- 4 side, and that the numbers that he was getting were correct
- 5 numbers.
- Now, the bottom line is the grant has never been 6
- 7 terminated; right? They have no evidence of termination.
- 8 Suspended. And the Judge is right, I could talk for another
- two hours. And I probably, when I sit down or when I go to 9
- 10 sleep tonight and wake up, I could think of some of the most
- significant things I could think of to share with you people. 11
- 12 But the reality is that you sat here, paid attention. You know
- 13 the evidence, you know your duty. I have -- being a criminal
- 14 defense lawyer is an awesome responsibility. And you have --
- I've done all I could, okay. He came here, he pled not guilty. 15
- 16 We'll wait here for you folks to come back and say he's not
- guilty. And I thank you, and I could still say good morning, 17
- 18 so have a good morning.
- THE COURT: Thank you, Mr. Rubinstein. 19
- 20 MR. RUBINSTEIN: Thank you, Judge.
- 21 THE COURT: All right. Are you ready to proceed, Mr.
- 2.2 Everdell?
- 23 MR. EVERDELL: Yes, your Honor.
- 24 Ladies and gentlemen, every case in federal court is
- important, but not every case in federal court is close. This 25

1 is not a close case. The evidence that you've heard over the

- 2 last week has been clear, that the defendant misspent grant
- money, and he spent the money on things that he knew, things 3
- 4 that he was specifically told he couldn't spend the money on.
- 5 And what's even more outrageous is that the defendant spent
- money that was supposed to go for scientific research to help 6
- 7 us all, money that other scientists who didn't get this grant
- 8 could have used to make wonderful life changing discoveries.
- So the defendant didn't just cheat the government, he cheated 9
- 10 all of us.
- 11 Now, the defense counsel in his closing remarks tried
- 12 to take your eye off the ball in this case. He tried to make
- 13 you focus on a number of things that are not really at the
- 14 heart of this case. He wants you to speculate about witnesses
- you didn't even hear from. He wants you to wonder about what, 15
- 16 whether the defendant was in Canada in 2003, after the grant
- 17 was even suspended. These are not the things that are at the
- 18 heart of this case. So in the next few minutes I want to take
- 19 a step back and I want to focus briefly again on how the
- 20 evidence shows the defendant intentionally misspent the grant
- 21 funds, and then I'm going to focus a little bit about some of
- 2.2 the arguments the defense counsel made in his closing remarks,
- 23 and see why none of it is borne out by the evidence.
- 24 Now, first, let me just reiterate one point to you,
- ladies and gentlemen. The government bears the burden of proof 25

1 at all times. The defendant doesn't have to say anything or do

- 2 anything to prove his innocence. But you are entitled to
- 3 examine the case they put on and the arguments defense counsel
- 4 made, to see whether or not they make any sense.
- 5 So with that, let's first take a step back and look at
- 6 just a few examples of the evidence before you of the
- 7 defendant's guilt.
- 8 Let's take a look at regs. This is a big item in the
- 9 case. There can be no doubt that the defendant was told,
- 10 repeatedly, by several different people that no matter what the
- 11 situation may be, you cannot use ATP funds to pay for rent.
- 12 The defendant heard it from Hope Snowden, who told him this
- 13 right after the grant was awarded. He heard it from B. J.
- 14 Lide, another of the grant administrators. He heard it from
- 15 his own business manager, Lee Gurfein, who himself had heard it
- 16 from Hope Snowden, in a phone call repeatedly. He heard it
- 17 from Frank Spring, the bookkeeper he hired in connection with
- 18 the first year audit, and he heard it from Robert Benedict, his
- 19 second year book manager, business manager. Indeed it seems
- 20 like the only person for whom this was not completely evident
- 21 was the defendant. And why is that? It's not because the rule
- 22 wasn't crystal clear. It was. It was because the defendant
- 23 simply refused to listen to what he didn't want to hear.
- 24 Remember what Robert Benedict told you about how --remember
- 25 what Robert Benedict told you about how the defendant operated.

1 He would go from person to person asking the same question

- 2 again and again until he got the answer he liked. Well, in
- 3 this case the defendant never got the answer he wanted and he
- 4 went ahead and he did it anyway.
- 5 Remember what Lee Gurfein told you, he thought -- he
- 6 told you that the defendant thought that everyone at NIST loved
- 7 him and that he could do anything he wanted with the money.
- 8 That's exactly what happened here. This did not happen because
- 9 the defendant didn't understand the rules or make an honest
- 10 mistake. This happened because the defendant refused to
- 11 understand what all parents tell there five-year-old kids when
- 12 they stomp their feet and hold their breath when they don't get
- what they want, and that means no means no.
- 14 And in the end the evidence clearly showed the
- 15 defendant intentionally misspent \$60,000 on rent in the first
- 16 year of the grant alone.
- Now, defense counsel got up and he talked to you about
- 18 rent. What did he say to you about rent? He said the
- 19 defendant felt entitled to it. And that's exactly the problem,
- 20 he felt entitled to it. He was told he couldn't do it, and he
- 21 did it anyway. And he says, it finally dawned on him in 2002
- 22 that he couldn't use ATP funds to pay for rent? It finally
- dawned on him in 2002? That's not what the evidence showed.
- 24 He was told in 2001 repeatedly by many different people. How
- 25 could it possibly finally dawn on him in 2002 that you can't

- use these funds to pay for rent? How is that possible? It's
- 2 because he's deliberately ignoring everything that people are
- 3 telling him. This is deliberate ignorance on the part of the
- 4 defendant. He does not deserve some kind of special
- 5 congratulations because he stopped paying rent to himself in
- 6 2003, after the grant was suspended.
- 7 MR. RUBINSTEIN: Objection. It wasn't after, it was
- 8 before.
- 9 THE COURT: Objection sustained to that.
- 10 MR. EVERDELL: And of course there were the utilities.
- 11 THE COURT: I think the evidence -- my recollection --
- 12 the jury's recollection will govern is that it was in December
- of 2002 before the grant was suspended in June 2003.
- MR. EVERDELL: And there were the utilities as well.
- 15 Again, the defendant was told repeatedly by multiple people,
- 16 you can't use ATP funds to pay for utilities. Again, he chose
- not to listen and he spent \$16,000 on utilities in year one
- 18 alone.
- 19 And, finally, there were several charges the defendant
- 20 incurred that were not only in the budget, not -- excuse me --
- 21 not in the budget, but that no one could possibly think were
- 22 legitimate research expenses. Over \$5,000 in the first year of
- the grant alone for his cleaning lady, Margaret Ferrand.
- 24 Defendant counsel didn't comment at all on that in his closing
- 25 statements for his cleaning lady. The checks themselves on the

1 memo line say cleaning. How is that possible that anyone could

- 2 understand that that's a grant related expense? The rules were
- 3 clear. You got --
- 4 MR. RUBINSTEIN: Objection, your Honor. There's
- 5 evidence that she scanned, she did other things -- their own
- 6 documents.
- 7 THE COURT: Objection overruled. It's argument.
- 8 MR. EVERDELL: And there are a hundred dollars on
- 9 meals and personal items like the blender and the dust buster.
- 10 I mean take a look at these items, ladies and gentlemen. Are
- 11 there anything -- does anyone believe these are for scientific
- 12 purposes?
- 13 We've talked a lot about -- defense counsel talked a
- 14 lot about the GPS tracking device, and where he went with it.
- 15 He may have gone to D.C., but the issue is not where he went
- 16 with it. The issue is what money he used to pay for it. This
- is not an approved expense. And by the way, if you look at the
- 18 luggage tag that it's on it, this was used in a flight August
- 19 13th, '05, well after the grant was suspended. This is a
- 20 personal item. He's not using this for grant stuff. We're not
- 21 saying that you can't have a digital camera. We're not saying
- 22 you can't have a GPS device or a blender or dust buster.
- 23 Simply saying that you can't use grant funds to pay for it.
- 24 And that's evidence, that is evidence and it was evident to the
- 25 defendant. And these items just go to show that the defendant

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was reckless with the taxpayer money and was using it to pay 1

- for his daily personal expenses. Remember what Lee Gerfein
- told you. He testified that during the grant proposal writing 3
- 4 process, he saw what he believed to be the defendant living off
- 5 his credit cards because he had no other money. Well, once the
- ATP funds became available, the defendant did exactly the same 6
- 7 thing with the ATP money, he cut himself \$75,000 and used it to
- 8 pay his personal debts.
- And let's not forget the evidence clearly showed that
- 10 all these funds were being spent with ATP funds. CASI had no
- 11 other money. That's what the bank statements that Belinda
- 12 Riley talked about show, and that's what both CASI business
- 13 manager Lee Gurfein and Robert Benedict told you, there was no
- 14 other money.
- So now that we have a clear picture of what's at the 15
- 16 heart of this case, let me address some of the arguments
- 17 defense counsel raised in his closing remarks. Now, first one
- 18 of the things that he mentioned, that he raised was that the
- 19 government is trying to put the defendant in jail just because
- 20 he violated some grant rules; how could he possibly master
- 21 hundreds of pages of rules and thick regulations; nobody could
- 2.2 possibly do that. Well, that's not what we're saying. Of
- 23 course it's not necessary for the defendant to have an
- 24 encyclopedic knowledge of the Code of Federal Regulations and
- the ATP grant rules. That was Hope Snowden's job. However, it 25

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1 was the defendant's obligation to listen to what Hope Snowden

- told him and what others told him about what he could and
- couldn't do under those regulation. And that's what he didn't 3
- 4 do.
- 5 The defendant chose to disregard that advice, and in
- fact not only did he not listen to Hope Snowden, but he did not 6
- 7 listen to the people that he specifically hired to help him in
- 8 these areas; his business managers, his bookkeepers. That is
- not trying his best to comply. That is not an innocent 9
- 10 misunderstanding. That is conscious flouting of the rules.
- And it doesn't take a Ph.D. to be able to listen and understand 11
- 12 what everyone around you is telling you.
- 13 Now, he thought I suppose, defense counsel commented
- 14 that he thought he was free to disagree, he was free to
- disagree if he wanted. Well, if I entrust you with my money 15
- 16 and I tell you that you can't spend it in certain ways, you
- 17 can't do X and you can't do Y, then you don't have the freedom
- 18 to disagree with me. You have to spend it how I tell you you
- 19 can spend it. The disagreement is not an issue. He was told
- 20 what he could and couldn't do. Just take a look at rent,
- 21 utilities, and he did it anyway.
- 2.2 Defense counsel also commented that, well, the
- 23 defendant was bad with finances, right. He's an incompetent
- 24 manager; we can't hold him responsible for that, we certainly
- can't send him to jail for that. Well, we agree that the 25

defendant was an incompetent manager, but that doesn't get him 1

- 2 off the hook. You heard testimony that he was a hands on
- manager. He hired people to run the finances and keep the 3
- 4 books straight, but then wouldn't let them do their jobs. Now
- 5 if you're a defendant, if you're a defendant and you're such an
- 6 incompetent manager, you're bad with finances and all you
- 7 really want to focus on is the science and not bother with all
- 8 the boring business stuff, wouldn't you hire people to do it
- for you and then let them do what they needed to do so that you 9
- 10 could get on with your research? Of course you would.
- not what he did, though. He didn't. He wanted to keep control 11
- 12 of the books.
- 13 You heard testimony that Lee Gurfein, first year
- 14 business manager, was stripped of his authority to sign checks
- 15 by the defendant. Why? Because the defendant wanted to keep
- 16 control of the books and the check writing, because he wanted
- 17 to spend the money the way he wanted to spend the money, and he
- 18 didn't want any interference with that. That's not someone who
- 19 just want to focus on the science and leave all the business
- 20 stuff to somebody else. That's someone who wants to be right
- 21 in the middle of things. And there's a reason why he did, he
- wanted to keep control of the money for himself. And when he 2.2
- 23 saw things he didn't like, he would muck around in the books he
- 24 changed entries and meddle in areas that people knew better
- than he did. Why did he do this? Because he thought he knew 25

1 better, and he thought he could do what he wanted and he

- 2 thought he'd get away with it.
- Defense counsel also said something about how there 3
- 4 was tacit authority from grant to revise any of the costs he
- wanted at any time. Well, where is the evidence of that? Did 5
- 6 you hear that from Hope Snowden that he could just negotiate
- 7 any time you want? No. No. There is no evidence of that.
- 8 You are allowed to amend your budget during the grant year and
- 9 for years that happen or still to come. We heard that, yes.
- But you're not allowed to amend your budget for years that are 10
- already over. Hope Snowden told you that, and so did Robert 11
- 12 Benedict. And if you look at page 11 of Exhibit 4, the defense
- 13 counsel mentioned, that's what they were testifying about.
- That year is already over. That money is already spent. You 14
- can't unring that bell. 15
- 16 And there are rules. It's not all one big
- 17 negotiation. You heard from Hope Snowden that she told the
- 18 defendant, the budget is the Bible; you got to get everything
- 19 in writing, you got to get it approved if you're going to make
- 20 significant changes. That was crystal clear. It's not all one
- 21 wash, big negotiation. That's not how this works.
- 2.2 Now, after defense counsel had commented about how
- 23 we're supposed to interpret the defendant's actions, he also
- 24 took some shots at the witnesses. And he took a shot at NIST
- and tried to make it seem like it's their fault that this all 25

1 happened, right. You recall him talking about NIST, and they

- 2 must have had something against the defendant that they were
- 3 out to get him and they wanted to end this project. Well, what
- 4 evidence is that of that? You heard --
- 5 MR. RUBINSTEIN: I didn't say that. I didn't say it
- 6 was NIST.
- 7 THE COURT: Objection.
- 8 MR. RUBINSTEIN: Mischaracterization.
- 9 THE COURT: Objection sustained, Mr --
- 10 MR. RUBINSTEIN: People over there.
- 11 THE COURT: Objection overruled, Mr. Rubinstein. This
- is argument, and they can remember what you said.
- 13 MR. EVERDELL: Defense counsel said they were picking
- on his client, Dr. Karron. You saw exactly why this grant got
- 15 suspended. It's because they saw so many different numbers
- 16 coming at them in such quick succession that they thought
- 17 something really bad was going on there with their funds, they
- 18 were getting misspent, in a really bad way. And that's why it
- 19 would happen. They got these budget revisions all within weeks
- 20 of each other. All the numbers were different for year one
- 21 even after year one was over. That raised red flags, and
- 22 rightfully so. That's what the problem was. And then they
- 23 called in the auditors and there was a problem, low and be
- 24 hold. And that's why the grant got suspended, it's because he
- 25 was misspending the money. We weren't out to get him. They

1 just want to make sure our taxpayer dollars are being spent for

- what it's supposed to be spent for, for research, and it
- 3 wasn't.
- 4 And they tried, defense counsel tried to take some
- attacks on the witnesses, about Hope Snowden. Tried to make 5
- 6 her look like she was just some bureaucrat, rigid understanding
- of the rules. And she was not out to help him. Well, you met
- 8 Hope Snowden, all right. You remember her testimony. Hope,
- evaluate for yourselves what kind of person she is. She told 9
- 10 you that she was always willing to receive and answer questions
- and receive calls. And she did that on numerous occasions for 11
- the defendant and for Lee Gurfein. 12
- 13 Now the fact she didn't always say yes to them doesn't
- 14 make her a rigid bureaucrat. It makes her good at her job. It
- 15 means that she's trying to make sure that the money is spent
- 16 for what it's supposed to be spent for. Okay. And Hope
- 17 Snowden explained to you, by the way, why she couldn't talk to
- 18 Robert Benedict or why Robert Benedict wasn't approved as the
- 19 business manage for the second year. It's because he was
- 20 part -- that letter asking for his authorization to be the
- 21 business manager, was part of one of those many requested
- 2.2 budget revisions that never got approved because the numbers
- 23 were so messed up. So yes, you may have seen an e-mail from
- 24 Bob Benedict where he may have expressed frustration by the
- 25 fact that he wasn't hearing from Hope Snowden and that things

weren't moving along, but Hope Snowden explained to you why

- that happened. It's because she couldn't do anything without
- 3 the proper authorization. That's why he never got approved.
- 4 It was part of the budget that never got approved. That's why
- 5 that all happened.
- 6 Now, defendant also talked to you about Joan Hayes,
- 7 where was Joan Hayes. Well, that's -- he's trying to suggest
- 8 the government is trying to hide something from you by not
- 9 calling Joan Hayes. Well, that's simply not the case. Ladies
- 10 and gentlemen, you sat here for over a week, and patiently
- 11 attentatively heard the testimony in this case. Did you really
- 12 need to hear from another auditor? You have the analysis done
- 13 by Belinda Riley, and that analysis does not rely on CASI's
- 14 books and records, which were always in flux. Her analysis is
- 15 based -- Belinda Riley's analysis is based on the bank records
- 16 and checks and American Express cards and invoices. Those are
- 17 all fixed. And her analysis traces out the expenditures to the
- 18 last penny. And, by the way, Belinda Riley's analysis, when
- 19 the defendant tried to poke some holes in it, he tried to say
- 20 he didn't -- she didn't take into account his personal bank
- 21 account. Well, his personal bank records. Well, look at
- 22 Government's Exhibit 111 when you go back to the jury room.
- 23 That's Belinda Riley's analysis of his personal bank records.
- 24 And the Master Card payments that he talked about so much are
- 25 there, page 16 of 27. She took those into account.

1 But it doesn't matter about the personal statements.

- 2 The personal statements are not the grant money. The grant
- money, we heard, was all housed in the CASI accounts. It's 3
- 4 irrelevant what happens with the personal bank records and the
- 5 Master Card records of the defendant. We're talking here about
- 6 what happened to the ATP money, the grant money, that was in
- the CASI accounts. That's the analysis in Government's exhibit
- 8 110. That's what you need to focus on. Feel free to check it
- 9 yourself.
- 10 Defense counsel also tried to argue to you that the
- 11 defendant should be given some credit because he tried to pay
- 12 some money back, he tried to get the grant restarted. Ladies
- 13 and gentlemen, if you misspend money and then decide to pay it
- 14 back later, you still misspent the money. You can't unring
- that bell. It doesn't change that. This was intentional. He 15
- 16 knew what he was doing and he knew it was wrong. He didn't
- 17 believe the people around him. He disregarded them at every
- 18 turn.
- 19 And defense counsel's also suggested that you should
- 20 consider the fact that some of the things that he did, like
- 21 the, quote unquote, improvement to his apartment actually
- 2.2 decreased the value of his apartment, right, so that what he
- 23 did for the company was not personally benefiting him, right.
- 24 But you're going to hear, when Judge Patterson instructs you on
- the law -- it's for him to instruct you on the law, not me --25

1330

but I anticipate that you're going to learn that whether or not the misapplied money benefited CASI in any way is irrelevant.

- 3 The fact that certain expenses may or may not have benefited
- 4 CASI does not give the defendant a free pass under the law.
- Now make no mistake, ladies and gentlemen, this case
- 6 is not about someone who tried his best to comply with the
- 7 rules and innocently misunderstood what was expected of him.
- 8 This is a case about someone who is told by several people on
- 9 multiple occasions what he could and could not do with the
- 10 grant funds, and who deliberately ignored what he didn't want
- 11 to hear. This is a case about someone who is so convinced that
- 12 he could get his way because he was so loved by the people at
- 13 NIST, that he didn't have to follow the rules, and that he
- 14 could do whatever he wanted with the grant money. And as a
- 15 result of his attitude, the defendant willfully disregarded
- 16 everyone around him and misspent the taxpayers money clearly on
- 17 unauthorized expenses like rent and utilities and personal
- 18 items, cleaning ladies, blenders, dust busters, other things,
- 19 things that couldn't possibly be related to research, and all
- 20 because he thought the rules did not apply to him. Well, the
- 21 defendant was wrong. That's not how this works. He can't do
- 22 whatever he wants, and it's time to hold had him accountable.
- When I gave the opening statement a few days ago, I told you
- 24 that if you pay close attention to the evidence and follow the
- 25 Judge's instructions and use your common sense, you will arrive

1 at the one verdict that will be consistent with the law and the

- 2 evidence at the end of this case, and now all the evidence is
- 3 in. The case now rests in your hands. And I submit to you
- 4 that the government has kept its promise to you and has proven
- 5 this case, beyond a reasonable doubt, and the only verdict that
- 6 is now consistent with the law and the evidence is a verdict of
- 7 guilty for Daniel Karron. Thank you.
- 8 THE COURT: Well, it's -- thank you, Mr. Everdell.
- 9 It's now 12:20 and lunch is scheduled for 1:00. I
- 10 think I can -- the charge is not short, but it'll probably run
- 11 past 1:00, because I don't read a particularly fast charge. I
- 12 think that you want to be able to absorb what I say as I say
- it, and for that reason I read relatively slowly. But I'll try
- 14 and do the best I can if you're all ready to go now. If anyone
- 15 needs a break, let me know. All right? Then, I'll proceed.
- 16 Members of the jury, we're now at that stage of the
- 17 trial where you will soon undertake your final function as
- 18 jurors. I know you will try the issues that have been
- 19 presented to you according to the oath which you have taken as
- 20 jurors, and which you promised that you will well and truly try
- 21 the issues in this case and render a true verdict. If you
- 22 follow that oath and try the issues without fear or prejudice
- or bias or sympathy, you will arrive at a true and just
- 24 verdict.
- 25 The fact that the prosecution is brought in the name

86BZKAR3 Charge

of the United States of America entitles the government to know

greater consideration than that accorded to any other party to

- 3 a litigation. By the same token, it is entitled to no less
- 4 consideration. All parties, whether government or individuals,
- 5 stand as equals at the bar of justice.
- 6 You have now heard all the evidence in the case, as
- 7 well as the final arguments of the lawyers for the parties.
- 8 My duty at this point is to instruct you as to the
- 9 law. It is your duty to accept these instructions of law and
- 10 apply them to the facts as you will determine them, just as it
- 11 has been my duty to preside over the trial and decide what
- 12 testimony and evidence is relevant under the law for your
- 13 consideration.

2

- On these legal matters, you must take the law as I
- 15 give it to you. If any attorney has stated a legal principle
- 16 different from any that I state to you in my instructions, it
- is my instructions that you must follow.
- 18 You should not single out any instruction as alone
- 19 stating the law, but you should consider my instructions as a
- 20 whole when you retire to deliberate in the jury room.
- 21 You should not, any of you, be concerned about the
- 22 wisdom of any rule that I state. Regardless of any opinion
- that you may have to what the law may be or ought to be, it
- 24 would violate your sworn duty to base a verdict upon any other
- view of the law than that which I give you.

86BZKAR3 Charge

1 Now, after listening to my instructions about the law,

- 2 you will then determine how this case should be decided.
- As I've said, the members of the jury are the sole and 3
- 4 exclusive judges of the facts. You decide based upon the
- weight of the evidence; you determine the credibility of the 5
- witnesses; you resolve such conflicts as there may be in the 6
- 7 testimony, and you draw whatever reasonable inferences you
- 8 decide to draw from the facts as you will determine them.
- In determining the facts, you must rely upon your own 9
- 10 recollection of the evidence. What the lawyers have said in
- 11 their opening statements and in their closing arguments and
- their objections or in their questions is not evidence. 12
- 13 this connection, you should bear in mind that a question put to
- a witness is never evidence. It is only the answer which is 14
- evidence. Questions are relevant only to the extent that they 15
- 16 enable you to understand the answer. Nor is anything I may
- 17 have said during the trial or summations, or may say during
- 18 these instructions with respect to a fact matter to be taken in
- 19 substitution for your own independent recollection. What I say
- 20 is not evidence.
- 21 The evidence before you consists of the answers given
- 2.2 by the witnesses, the sworn testimony that they gave from the
- 23 stand, as you recall it, and the exhibits that were received in
- 24 evidence.
- 25 You've heard evidence in the form of stipulations that

86BZKAR3 Charge

1 contain facts that were agreed to be true. You must accept the

- 1 Contain facts that were agreed to be true. For must accept the
- 3 The evidence does not include questions. Only the
- 4 answers are evidence. But you may not consider any answer that
- 5 I directed you to disregard or that I directed struck from the
- 6 record. Do not consider such answers.

facts in those stipulations as true.

- 7 Since you are the sole and exclusive judges of the
- 8 facts, I have not meant and I do not mean by my words or acts
- 9 to indicate any opinion as to the facts or what your verdict
- 10 should be. The rulings that I have made during the trial are
- 11 not any indication of my views of what your decision should be
- 12 as to whether or not the guilt of the defendant has been proven
- 13 beyond a reasonable doubt.
- 14 I also ask you to draw no inference from the fact that
- 15 upon occasion I asked questions of certain witnesses. These
- 16 questions were only intended for clarification or to expedite
- 17 matters, and certainly were not intended to suggest any
- 18 opinions on my part as to the verdict you should render or
- 19 whether any other witnesses may have been more credible than
- 20 any other witness. You are expressly to understand that the
- 21 Court has no opinion as to the verdict you should render in
- this case.
- As to the facts, ladies and gentlemen, you are the
- 24 exclusive judges. You have the responsibility of reviewing the
- 25 evidence, of weighing the credibility of the witnesses,

86BZKAR3 Charge

1	separating the important from the unimportant, making the
2	factual determinations which bear on the guilt or lack of guilt
3	of the defendant. You are to perform the duty of finding the
4	facts without bias or prejudice as to any party.
5	It is the duty of the attorney for each side of a case
6	to object when the other side offers testimony or other
7	evidence which the attorney believes is not properly
8	admissible. Counsel also have the right and duty to ask the
9	Court to make rulings of law and request conferences in the
10	robing room or at the sidebar out of the hearing of the jury.
11	All those questions of law must be decided by me, the
12	Court. You should not show any prejudice against any attorney
13	or his or her client because the attorney objected to the
14	admissibility of evidence, asked for a conference out of the
15	hearing of the jury or asked the Court for a ruling on the law.
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86B7KAR4 Charge

1 THE COURT: As I have already indicated, my rulings on

- 2 the admissibility of evidence do not indicate any opinion about
- the weight or effect of such evidence. You are the sole judges 3
- 4 of the credibility of all witnesses and the weight and effect
- 5 of all the evidence.
- Now, there are two types of evidence which you may 6
- 7 properly use in deciding whether a defendant is guilty or not
- 8 guilty.
- One type of evidence is called direct evidence. 9
- 10 Direct evidence is a witness's testimony as to what he saw,
- 11 heard or observed. In other words, when a witness testifies
- about what is known to him of his own knowledge by virtue of 12
- 13 his own senses -- what he sees, feels, touches or hears -- that
- is called direct evidence. 14
- Circumstantial evidence is evidence which tends to 15
- 16 prove one fact by proof of other facts. There is a simple
- 17 example of circumstantial evidence which is often used in this
- 18 courthouse.
- 19 Assume that a witness testified that when he came into
- 20 the courthouse this morning, the sun was shining and it was a
- 21 nice day.
- 2.2 Assume he testified that someone walked into the
- 23 courtroom with an umbrella which was dripping wet, and that
- 24 somebody else walked in with a raincoat which was also dripping
- 25 wet.

86B7KAR4 Charge

- 1 Now, he does not testify that he looked out of the
- 2 courtroom and saw that it was raining. So there is no direct
- evidence of that fact. But on the combination of facts which I 3
- have asked you to assume, it would be reasonable and logical --4
- if you found the witness's testimony to be credible -- for you 5
- to conclude that between the time he testified and the time 6
- 7 those people walked in, it had started to rain.
- That is all there is to circumstantial evidence. 8
- 9 infer on the basis of reason and experience and common sense
- 10 from an established fact the existence or the nonexistence of
- 11 some other fact.
- 12 Many facts, such as a person's state of mind, can
- 13 rarely be proved by direct evidence.
- Circumstantial evidence is of no less value than 14
- direct evidence; it is a general rule that the law makes no 15
- 16 distinction between direct and circumstantial evidence, but
- 17 simply requires that before convicting the defendant, the jury
- 18 must be satisfied that the government has proved the
- 19 defendant's guilt beyond a reasonable doubt after review of all
- 20 of the evidence in the case, direct and circumstantial.
- 21 During the trial you may have heard the attorneys use
- 2.2 the term "inference" and in their arguments they have asked you
- 23 to infer, on the basis of your reason, experience and common
- 24 sense, from one or more established facts the existence of some
- other fact. 25

1 An inference is not a suspicion or a guess. It is a

- 2 reasoned, logical decision to conclude that a disputed fact
- exists on the basis of another fact that you know exists. 3
- 4 There are times when different inferences may be drawn
- 5 from facts whether by direct or circumstantial evidence. The
- 6 government may ask you to draw one set of inferences, while the
- 7 defense may ask you to draw another. It is for you and you
- 8 alone to decide what inferences you will draw.
- The process of drawing inferences from facts in 9
- 10 evidence is not a matter of guesswork or speculation. An
- 11 inference is a deduction or a conclusion which you, the jury,
- are permitted to draw -- but not required to draw -- from the 12
- 13 facts which you find to be proven by either direct or
- 14 circumstantial evidence. In drawing an inference, you should
- exercise your common sense. 15
- 16 So while you are considering the evidence presented to
- 17 you, you are permitted to draw, from the facts which you find
- 18 to be proven, such reasonable inferences as would be justified
- 19 in the light of your experience.
- 20 Here, again, let me remind you that whether based upon
- 21 direct or circumstantial evidence, or upon logical or
- 2.2 reasonable inferences drawn from such evidence, you must be
- 23 satisfied of the guilt of the defendant beyond a reasonable
- 24 doubt before you may convict.
- Now, how do you evaluate the credibility or 25

believability of the witnesses? You have had an opportunity to 1

- 2 observe all of the witnesses. It is now your job to decide how
- believable each witness was in his or her testimony. You are 3
- 4 the sole judges of the credibility of each witness and of the
- 5 importance of his or her testimony.
- 6 It must be clear to you by now that you are being
- 7 called upon to resolve various factual issues under the
- 8 indictment, in the face of very different pictures painted by
- the government and the defense which cannot be reconciled. You 9
- 10 will now have to decide where the truth lies, and an important
- part of that decision will involve making judgments about the 11
- 12 testimony of the witnesses you have listened to and observed.
- 13 In making those judgments, you should carefully scrutinize all
- 14 of the testimony of each witness, the circumstances under which
- each witness testified, and any other matter in evidence which 15
- 16 may help you to decide the truth and the importance of each
- 17 witness's testimony.
- 18 Your decision on whether or not to believe a witness
- 19 may depend on how the witness impressed you. Was the witness
- 20 candid, frank and forthright? Or, did the witness seem as if
- 21 he or she was hiding something, or being evasive or suspect in
- 2.2 some way? How did the way the witness testified on direct
- 23 examination compare with how the witness testified on
- 24 cross-examination? Was the witness consistent in his or her
- testimony or did he or she contradict himself or herself? Did 25

1 the witness appear to know what he or she was talking about and

- 2 did the witness strike you as someone who was trying to report
- his or her knowledge accurately? 3
- 4 How much you choose to believe a witness may be
- 5 influenced by the witness's bias. Does the witness have a
- relationship with the government or the defendant which may 6
- affect how he or she testified? Does the witness have some
- 8 incentive, loyalty or motive that might cause him or her to
- shade the truth? Or does the witness have some bias, 9
- 10 prejudice, or hostility that may have caused the witness --
- consciously or not -- to give you something other than a 11
- 12 completely accurate account of the facts he or she testified
- 13 to?
- Even if the witness was impartial, you should consider 14
- whether the witness had an opportunity to observe the facts he 15
- 16 or she testified about, and you should also consider the
- witness's ability to express himself or herself. Ask 17
- yourselves whether the witness's recollection of the facts 18
- 19 stands up in the light of all other evidence.
- 20 In other words, what you must try to do in deciding
- 21 credibility is to size a person up in light of his or her
- 2.2 demeanor, the explanations given, and in light of all the other
- 23 evidence in the case, just as you would do in any important
- 24 matter where you are trying to decide if a person is truthful,
- straightforward, and accurate in his or her recollection. 25

1	deciding the question of credibility, remember that you should
2	use your common sense, your good judgment, and your experience.
3	Now, in evaluating the credibility of the witnesses,
4	you should take into account any evidence that the witness who
5	testified may benefit in some way from the outcome of this
6	case. Such an interest in the outcome creates a motive to
7	testify falsely and may sway the witness to testify in a way
8	that advances his or her own interests. Therefore, if you find
9	that any witness whose testimony you are considering may have
10	an interest in the outcome of this trial, then you should bear
11	that factor in mind when evaluating the credibility of his or
12	her testimony and accept it with great care.
13	Can I speak to counsel a minute?
14	(Continued on next page)
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1	(At the sidebar)
2	THE COURT: I noticed that there is no expert witness
3	instruction in here. It occurred to me that you both might
4	want it.
5	MR. KWOK: That's correct. We do have expert witness
б	The government would request an instruction.
7	MR. RUBINSTEIN: I'm not requesting an instruction,
8	your Honor.
9	THE COURT: Do you object?
10	MR. RUBINSTEIN: No, I think that would be
11	obstructionist.
12	THE COURT: I will ask my clerk to just bring me down
13	one, an instruction on expert witnesses.
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- 1 (In open court)
- 2 THE COURT: I'm going to go right ahead.
- You have heard the testimony of government employees. 3
- 4 The fact that a witness may be a government employee does not
- 5 mean that his or her testimony is necessarily deserving of more
- consideration or greater weight than that of an ordinary 6
- 7 witness. Also it does not mean that his or her testimony is
- 8 necessarily deserving of less consideration or less weight than
- 9 that of an ordinary witness.
- 10 It is your decision, after reviewing all the evidence,
- 11 whether to accept the testimony of the government employee and
- 12 to give that testimony whatever weight, if any, you find it
- 13 deserves.
- 14 The defendant has pleaded not guilty to the charges in
- the indictment. 15
- 16 As a result of the defendant's pleas of not guilty,
- 17 the burden is on the prosecution to prove the defendant is
- 18 guilty beyond a reasonable doubt. This burden never shifts to
- 19 the defendant for the simple reason that the law never imposes
- 20 upon the defendant in a criminal case the burden or duty of
- 21 testifying, or calling any witnesses or locating or producing
- 2.2 any evidence.
- 23 The law presumes the defendant to be innocent of all
- 24 of the charges against him. I therefore instruct you that the
- defendant is to be presumed by you to be innocent throughout 25

1 your deliberations until such time, if it ever comes, that you

- 2 as a jury are satisfied that the government has proven him
- 3 guilty beyond a reasonable doubt.
- 4 The defendant began the trial here with a clean slate.
- 5 This presumption of innocence alone is sufficient to acquit the
- 6 defendant unless you as jurors are unanimously convinced beyond
- 7 a reasonable doubt of his guilt, after a careful and impartial
- 8 consideration of all of the evidence in this case. If the
- 9 government fails to sustain its burden, you must find the
- 10 defendant not guilty.
- 11 This presumption was with the defendant when the trial
- 12 began and remains with him even now as I speak to you and will
- 13 continue with the defendant into your deliberations unless and
- 14 until you are convinced that the government has proven his
- 15 quilt beyond a reasonable doubt.
- 16 The defendant, Daniel Karron, did not testify in this
- 17 case. Under our Constitution, a defendant has no obligation to
- 18 testify or to present any evidence, because it is the
- 19 government's burden to prove the defendant guilty beyond a
- 20 reasonable doubt. That burden remains with the government
- 21 throughout the entire trial and never shifts to the defendant.
- 22 The defendant is never required to prove that he is innocent.
- You may not attach any significance to the fact that
- 24 the defendant did not testify. No adverse inference against
- 25 him may be drawn by you because he did not take the witness

1 stand. You may not consider this against the defendant in any

- way in your deliberations in the jury room. 2
- Now, I have said that the government must prove that 3
- 4 the defendant is guilty beyond a reasonable doubt.
- 5 question naturally is, "What is a reasonable doubt?" The words
- almost define themselves. It is a doubt based upon reason and 6
- 7 common sense. It is a doubt that a reasonable person has after
- carefully weighing of the evidence. It is a doubt which would 8
- cause a reasonable person to hesitate to act in a matter of 9
- 10 importance in his or her personal life. Proof beyond a
- reasonable doubt must, therefore, be proof of such a convincing 11
- 12 character that a reasonable person would not hesitate to rely
- 13 and act upon it in the most important of his own affairs.
- Reasonable doubt is not a caprice or whim; it is not 14
- speculation or suspicion. It is not an excuse to avoid the 15
- 16 performance of an unpleasant duty. And it is not sympathy.
- 17 In a criminal case, the burden is at all times upon
- 18 the government to prove guilt beyond a reasonable doubt. The
- 19 law does not require that the government prove guilt beyond all
- 20 possible doubt; proof beyond a reasonable doubt is sufficient
- 21 to convict. This burden never shifts to the defendant, which
- 2.2 means that it is always the government's burden to prove each
- 23 of the elements of the crimes charged beyond a reasonable
- doubt. 24
- 25 If, after fair and impartial consideration of all of

1 the evidence, you have a reasonable doubt, it is your duty to

- 2 acquit the defendant. On the other hand, if after fair and
- impartial consideration of all the evidence, you are satisfied 3
- 4 of the defendant's guilt beyond a reasonable doubt, you should
- 5 vote to convict.
- Under your oath as jurors you are not to be swayed by 6
- 7 sympathy. You are to be guided solely by the evidence in this
- 8 case, and the crucial, hardcore question that you must ask
- yourselves as you sift through the evidence is: Has the 9
- 10 government proven the guilt of the defendant beyond a
- reasonable doubt? 11
- 12 It is for you alone to decide whether the government
- has proven that the defendant is guilty of the crime charged 13
- solely on the basis of the evidence and subject to the law as I 14
- charge you. It must be clear to you that once you let fear or 15
- 16 prejudice or bias or sympathy interfere with your thinking,
- 17 there is a risk that you will not arrive at a true and just
- 18 verdict.
- 19 If you have a reasonable doubt as to the defendant's
- 20 guilt, you should not hesitate for any reason to find a verdict
- 21 of acquittal. But on the other hand, if you should find that
- 2.2 the government has met its burden of proving the defendant's
- 23 guilt beyond a reasonable doubt, you should not hesitate
- 24 because of sympathy or any other reason to render a verdict of
- 25 guilty.

1 The question of possible punishment of the defendant

- 2 is of no concern to the jury and should not, in any sense,
- enter into or influence your deliberations. The duty of 3
- 4 imposing a sentence on any convicted defendant rests
- 5 exclusively upon the court -- that is, upon me. Your function
- is to weigh the evidence in the case and to determine whether 6
- 7 or not the defendant is guilty beyond a reasonable doubt,
- 8 solely on the basis of such evidence. Under your oath as
- jurors, you cannot allow a consideration of the punishment 9
- 10 which may be imposed upon the defendant, if he is convicted, to
- influence your vote in any way, or in any sense to enter into 11
- 12 your deliberations.
- 13 Now, with these preliminary instructions in mind, let
- 14 us turn to the charge against the defendant, as contained in
- the indictment. I remind you that an indictment itself is not 15
- 16 evidence. It merely describes the charge made against the
- 17 defendant. It is an accusation. It may not be considered by
- 18 you as any evidence or proof of the guilt of the defendant.
- 19 Only the evidence or the lack of evidence presented here at
- 20 trial before you is relevant to that issue.
- 21 The defendant, Daniel Karron, is formally charged in
- 2.2 an indictment which contains one count. Before you begin your
- 23 deliberations, you will be provided with a copy of the
- 24 indictment containing the charge.
- 25 Count One of the indictment charges that from at least

1 in or about October 2001, up through and including in or about

- June 2003, Daniel B. Karron, the president and chief technical
- officer of a company called Computer Aided Surgery, Inc.
- 4 (CASI), intentionally misapplied \$5,000 and more in the care,
- 5 custody and control of CASI, while it was the beneficiary of a
- 6 federal grant of more than \$10,000 a year from the National
- 7 Institute of Standards and Technology, a federal entity.
- The indictment reads as follows:
- 9 Count One. The grand jury charges:
- 10 1. From at least in or about October, 2001, up
- 11 through and including in or about June 2003, in the Southern
- 12 District of New York and elsewhere, Daniel B. Karron, the
- 13 defendant, being an agent of an organization, which
- organization received in any one-year period benefits in excess
- of \$10,000 under a federal program involving a grant, contract,
- 16 subsidy, loan, guarantee, insurance and other form of federal
- 17 assistance, unlawfully, willfully and knowingly did embezzle,
- 18 steal, obtain by fraud, and otherwise without authority,
- 19 knowingly convert to the use of -- let me just go back a little
- 20 bit -- obtained by fraud and otherwise without authority
- 21 knowingly convert to the use of persons other than the rightful
- owner, and intentionally misapplied property valued at \$5,000
- and more that was owned by and was under the care, custody and
- 24 control of such organization, to wit, Karron, who was the
- 25 president and chief technical officer of Computer Aided Surgery

1 Inc., (CASI), knowingly misapplied more than \$5,000 of funds

- 2 under the care, custody and control of CASI, which received
- 3 more than \$10,000 in federal funds during a one-year period
- 4 from the Advanced Technology Program administered by the
- 5 National Institute of Standards and Technology.
- 6 And it cites Title 18 United States Code, Section 666.
- 7 Title 18 United States Code, Section 666, reads in
- 8 pertinant part as follows: "Theft or bribery concerning
- 9 programs receiving federal funds.
- 10 (a) Whoever, if circumstance described in subsection
- 11 (b) of this section exists --
- 12 (A) Embezzles, steals, obtains by fraud, or otherwise
- 13 without authority knowingly converts to the use of any person
- other than the rightful owner or intentionally misapplies,
- 15 property that is valued at \$5,000 or more, and is owned by, or
- is under the care, custody, or control of such organization,
- government, or agency, is guilty of a crime.
- 18 (b) The circumstance referred to in subsection (a) of
- 19 this section is that the organization, government, or agency
- 20 receives, in any one-year period, benefits in excess of \$10,000
- 21 under a federal program involving a grant, contract, subsidy,
- 22 loan, guarantee, insurance, or other form of federal
- 23 assistance.
- (c) This section does not apply to bona fide salary,
- 25 wages, fees, other other compensation paid, or expenses paid or

1 reimbursed, in the usual course of business.

- 2 In order to sustain its burden of proof with respect
- 3 to the allegation in Count one, the government must prove
- 4 beyond a reasonable doubt the following five elements:
- 5 First, at the time alleged in the indictment, the
- 6 defendant was an agent of Computer Aided Surgery, Inc., or
- 7 CASI;
- 8 Second, in a one-year period, CASI received a federal
- 9 grant in excess of \$10,000;
- Third, during that one-year period, the defendant
- 11 without authority intentionally misapplied the grant money;
- 12 Fourth, the misapplied grant money was under the care,
- 13 custody, or control of, CASI;
- 14 Fifth, the value of the money intentionally misapplied
- by defendant was at least \$5,000.
- 16 Now, let us separately consider these five elements.
- 17 The first element the government must prove beyond a
- 18 reasonable doubt is that at the time alleged in the indictment,
- 19 the defendant was an agent of CASI.
- The term "agent" means a person authorized to act on
- 21 behalf of an organization. Employees, partners, directors,
- 22 officers, managers and representatives are all agents of an
- 23 organization.
- 24 Second element the government must prove beyond a
- 25 reasonable doubt is that in a one-year period, CASI received

1 federal benefits in excess of \$10,000.

- 2 To prove this element, the government must establish
- 3 that CASI received, during a one-year period, benefits in
- 4 excess of \$10,000 under a federal program involving a grant,
- 5 contract, subsidy, loan, guarantee, insurance, or some other
- 6 form of federal assistance.
- 7 The one-year period must begin no more than 12 months
- 8 before the defendant committed the acts charged in the
- 9 indictment and must end no more than 12 months after those
- 10 acts. You can choose any period of federal funding you want as
- 11 long as you unanimously find that the acts of misapplication
- 12 charged in the indictment occurred in that one-year period.
- 13 The third element the government must prove beyond a
- 14 reasonable doubt is that the defendant without authority
- 15 intentionally misapplied money. To intentionally misapply
- 16 money means to use money under the control of CASI knowing that
- 17 such use is unauthorized or unjustifiable or wrongful.
- 18 Intentional misapplication includes the wrongful use of the
- 19 money for a purpose the defendant knew was unauthorized, even
- 20 if such use benefited CASI in some way.
- 21 In this case, to intentionally misapply money means to
- 22 intentionally apply the grant money received by CASI in a
- 23 manner which the defendant knew was unauthorized under the
- 24 terms and conditions of the grant. Misapplication of money,
- 25 however, does not apply to bona fide salary, wages, fringe

benefits, or other compensation paid, or expenses paid or

- 2 reimbursed, in the usual course of business.
- 3 As I said, the government must prove beyond a
- 4 reasonable doubt that the defendant acted intentionally in
- 5 misapplying grant money. To find that the defendant acted
- 6 intentionally, you must be satisfied beyond a reasonable doubt
- 7 that the defendant acted deliberately and purposefully. That
- 8 is, the defendant's misapplication must have been the product
- 9 of the defendant's conscious objective to spend the money for
- 10 an unauthorized purpose, rather than the product of a mistake
- or accident or some other innocent reason.
- 12 The fourth element that the government must prove
- 13 beyond a reasonable doubt is that the grant money that was
- intentionally misapplied was in the care, custody, or control
- of, CASI. Although the words "care," "custody," and "control"
- 16 have slightly different meanings, for the purposes of this
- 17 element, they express a similar idea. All that is necessary is
- 18 that CASI had control over and responsibility for the grant
- money.
- 20 The fifth and final element the government must prove
- 21 beyond a reasonable doubt is that the value of the
- intentionally misapplied money was at least \$5,000.
- The word "value" means face, par or market value, or
- 24 cost price, either wholesale or retail, whichever is greater.
- 25 "Market value" means the price a willing buyer would pay a

1 willing seller at the time the property was intentionally

- 2 misapplied.
- 3 You may aggregate or add up the value of the money
- 4 intentionally misapplied from a series of acts by the defendant
- to meet this \$5,000 requirement, so long as you find that each
- 6 act of intentional misapplication was part of a single scheme
- 7 by the defendant to misapply grant money under the care,
- 8 custody, and control of CASI.
- 9 The government does not have to prove that the
- 10 particular money misapplied by the defendant was the money
- 11 received by CASI as a federal grant. In other words, it is not
- 12 necessary for the government to show that the intentionally
- misapplied money was traceable to the actual federal grant
- 14 received by the organization. Thus, if the government
- 15 establishes that CASI received more than \$10,000 in federal aid
- 16 during a one-year period, and that, during that period, the
- 17 defendant misapplied funds valued at more than \$5,000 under the
- 18 care, custody, and control of CASI, the government will have
- 19 satisfied its burden with respect to this element. Money is
- 20 fungible, and the government need not trace the \$5,000 or more
- 21 alleged to be intentionally misapplied back to the federal
- 22 grant.
- 23 In addition to the elements of the offenses that I
- 24 have explained, you must consider whether any act in
- 25 furtherance of the crime charged in the indictment occurred

1 within the Southern District of New York. As I have instructed

- you, the Southern District of New York includes Manhattan and
- the Bronx. 3
- I should note that on this issue -- and this issue
- 5 alone -- the government need not prove venue beyond a
- reasonable doubt, but only by a mere preponderance of the 6
- 7 evidence. Thus, the government has satisfied its venue
- obligations if you conclude that it is more likely than not 8
- that any act in furtherance of the crime charged occurred in 9
- 10 the Southern District of New York.
- You have heard evidence during the trial that 11
- 12 witnesses have discussed the facts of the case and their
- 13 testimony with the lawyers before the witnesses appeared in
- 14 court.
- 15 Although you may consider that fact when you are
- evaluating a witness's credibility, I should tell you that 16
- 17 there is nothing either unusual or improper about a witness
- 18 meeting with lawyers before testifying so that the witness can
- 19 be aware of the subjects he or she will be questioned about,
- 20 focus on those subjects and have the opportunity to review
- 21 relevant exhibits before being questioned about them. Such
- 2.2 consultation helps conserve your time and the court's time.
- 23 fact, it would be unusual for a lawyer to call a witness
- 24 without such consultation.
- 25 Again, the weight you give to the fact or the nature

of the witness's preparation for his or her testimony and what

- 2 inferences you draw from such preparation are matters
- 3 completely within your discretion.
- 4 Now, you have heard testimony from what we call expert
- 5 witnesses. An expert witness is a person who by education or
- 6 experience has acquired learning or experience in a science or
- 7 a specialized area of knowledge. Such witnesses are permitted
- 8 to give their opinions as to relevant matters in which they
- 9 profess to be expert, and give their reasons for their
- 10 opinions.
- 11 Expert testimony is presented to you on the theory
- 12 that someone who is experienced in the field can assist you in
- 13 understanding the evidence or in reaching an independent
- 14 decision on the facts.
- 15 Now, your role in judging the credibility applies to
- 16 experts as well as to other witnesses. You should consider the
- 17 expert's opinions that were received in evidence in this case
- 18 and give them as much or as little weight as you think they
- 19 deserve.
- If you should decide that the opinion of an expert is
- 21 not based on sufficient education or experience, or on
- 22 sufficient data, or if you should conclude that the
- 23 trustworthiness or credibility of an expert is questionable for
- 24 any reason, or if the opinion of the expert was outweighed in
- 25 your judgment by other evidence in the case, then you might

- 1 disregard the opinion of the expert entirely or in part.
- On the other hand, if you find the opinion of the
- expert was based on sufficient data, education and experience, 3
- 4 and other evidence, and does not give you reason to doubt his
- 5 conclusions, you would be justified in placing great reliance
- on his testimony. 6
- 7 If you conclude that other persons may have been
- 8 involved in criminal acts charged in the indictment, you may
- not draw any inference, favorable or unfavorable, toward either 9
- 10 the government or the defendant from the fact that those
- persons are not named as defendants in this indictment or are 11
- 12 not present at this trial.
- 13 In addition, you should not speculate as to the
- reasons that individuals other than the defendant are not 14
- defendants in this trial. Those matters are wholly outside 15
- 16 your concern and have no bearing on your function as jurors in
- 17 this trial.
- 18 Both the government and the defendant have the same
- 19 power to subpoena witnesses to testify on their behalf. If a
- 20 potential witness could have been called by the government or
- 21 by the defendant and neither party called the witness, then you
- 2.2 may draw the conclusion that the testimony of the absent
- 23 witness might have been unfavorable to the government or to the
- 24 defendant or to both parties.
- 25 On the other hand, it is equally within your province

1 to draw no inference at all from the failure of a party to call

- a witness.
- You should remember that there is no duty on either
- 4 side to call a witness whose testimony would be merely
- cumulative of testimony already in evidence, or who would 5
- merely provide additional testimony to facts already in 6
- evidence.
- You have heard reference, in the testimony and in the
- arguments of defense counsel in this case, about the fact that 9
- 10 certain investigative techniques were not used by law
- enforcement authorities. There is no legal requirement that 11
- 12 the government prove its case through any particular means.
- 13 While you are to carefully consider the evidence presented by
- 14 the government, you are not to speculate as to why they used
- the techniques they did, or why they did not use other 15
- 16 techniques. The government is not on trial, and law
- 17 enforcement techniques are not your concern.
- 18 Your concern is to determine whether or not, based on
- 19 the evidence or lack of evidence, the guilt of the defendant
- 20 has been proven beyond a reasonable doubt.
- 21 There is testimony in this case of the previous good
- 2.2 character of the defendant. This testimony is not to be taken
- 23 by you as the witnesses' opinion as to whether the defendant is
- 24 guilty or not guilty. That question is for you alone to
- determine. Indeed, some of the character witnesses testified 25

1 that they had no direct, personal knowledge of the facts and

- 2 circumstances which were the focus of this case. You should
- consider evidence of good character together with all other 3
- 4 facts and all the other evidence in determining whether the
- prosecution has sustained its burden of proving the defendant's 5
- guilt beyond a reasonable doubt. Evidence of good character 6
- 7 may in itself create a reasonable doubt where without such
- evidence no reasonable doubt exists. But if, from all the 8
- evidence, you are satisfied beyond a reasonable doubt that the 9
- 10 defendant is guilty, a showing that the defendant previously
- 11 enjoyed a reputation of good character does not justify or
- 12 excuse the offense, and you should not acquit the defendant
- 13 merely because you believe that he had been a person of good
- 14 repute.
- Some of the exhibits that were admitted into evidence 15
- 16 were charts. These charts were introduced basically as
- 17 summaries. They are not direct evidence. They are summaries
- 18 of the evidence, and are admitted as aids to you. They are not
- 19 in and of themselves any evidence. They are intended only to
- 20 be of assistance to you in considering the evidence during your
- 21 deliberations.
- 2.2 In presenting the evidence which you have heard, it is
- 23 clearly easier and more convenient to utilize summary charts
- 24 than to place all of the relevant documents in front of you.
- It is up to you to decide whether those charts fairly and 25

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86B7KAR4 Charge

- 1 correctly present the information in the testimony and the
- 2 documents admitted in evidence. The charts are not to be
- 3 considered by you as direct proof of anything. They are merely
- 4 graphic demonstrations of what the underlying testimony and
- 5 documents are.
- 6 To the extent that the charts conform with what you
- 7 determine the underlying evidence to be, you should accept
- 8 them. But one way or the other, realize that the chart is not
- 9 in and of itself direct evidence. They are merely visual aids.
- 10 They are nothing more.
- 11 You are about to go into the jury room and begin your
- 12 deliberations. If during those deliberations you want to see
- or hear any of the exhibits, they will be sent to you in the
- 14 jury room upon question. If you want any of the testimony
- 15 read, that can also be done. But please remember that it is
- 16 not always easy to locate what you want, so try and be as
- 17 specific as you possibly can in requesting exhibits or portions
- 18 of the testimony which you may want.
- 19 Your requests for exhibits or testimony -- in fact any
- 20 communication with the court -- should be made to me in
- 21 writing, signed by your foreperson, and given to one of the
- 22 marshals. I will respond to any questions or requests you have
- as promptly as possible either in writing or by having you
- 24 return to the courtroom so I can speak to you in person. In
- 25 any event, do not, in any note or otherwise, tell me or anyone

else how you or any group of you have voted or propose to vote

- on the issue of the defendant's guilt until after a unanimous
- 3 verdict is reached. In other words, do not tell me or anyone
- 4 else what your numerical division is -- how many think one way
- 5 and how many think another -- if you are divided at any point
- 6 on how to decide the case because until you have reached a
- 7 verdict, you have no verdict.
- 8 I am sending a copy of the indictment into the jury
- 9 room for you to have during your deliberations. You may use it
- 10 to read the crime with which the defendant is charged with
- 11 committing. You are reminded, however, that an indictment is
- 12 merely an accusation and is not to be used by you of any proof
- of the conduct charged.
- 14 As already explained in these instructions, the
- 15 government, to prevail on the charge in the indictment must
- 16 prove the essential elements of that count in the indictment
- 17 beyond a reasonable doubt.
- 18 If it succeeds, your verdict should be guilty as to
- 19 that count; if it fails, it should be not guilty as to that
- 20 count. To report a verdict, your vote must be unanimous.
- 21 Your function is to weigh the evidence in the case and
- 22 determine whether or not the defendant is guilty of the count
- in the indictment solely on the basis of such evidence.
- Now, to aid you in your deliberations, and so that a
- 25 proper record can be made of your verdict, the court has

1 prepared a form of verdict. I am asking that the verdict form

- 2 be signed by the foreperson and filed with the court. When you
- 3 have unanimously agree upon your verdict, then the foreperson
- 4 will fill it in and sign it, and you tell the marshal you have
- 5 reached a verdict. Then you will be asked to come back into
- 6 open court and the clerk will ask whether your verdict is
- 7 unanimous.
- 8 It's a simple verdict form. Please hand it out. The
- 9 verdict form form reads as follows: " Count 1: With respect
- 10 to Count One of the indictment, S2 07 Crim. 541 (RPP), how do
- 11 you find the defendant Daniel B. Karron?" And it states
- 12 guilty, not guilty and a space for each answer. That's it.
- 13 Just because of the phraseology, there is only one
- 14 count in the indictment. There is no other charge against the
- 15 defendant. So don't draw the conclusion there must be other
- 16 charges.
- Now, each juror is entitled to his or her opinion;
- 18 each should, however, exchange views with his or her fellow
- 19 jurors. That is the very purpose of jury deliberation -- to
- 20 discuss and consider the evidence; to consider the arguments of
- 21 fellow jurors; to present your individual views; to consult
- 22 with one another; and to reach an agreement based solely and
- 23 entirely on the evidence or the lack of evidence -- if you can
- 24 do sought without violation to your own individual judgment.
- 25 Each of you must decide the case for yourself, after

1 consideration with your fellow jurors of the evidence in the

- Total retroit of the evidence in the
- 3 But you should not hesitate to change an opinion
- 4 which, after discussion with your fellow jurors, appears
- 5 incorrect.

case.

2

- 6 However, if, after carefully considering all of the
- 7 evidence and the arguments of your fellow jurors, you hold a
- 8 conscientious view that differs from the others, you are not to
- 9 change your position simply because you are outnumbered. If
- 10 they do not convince you that your position is incorrect, you
- 11 shall adhere to your position regardless of the lateness of the
- 12 hour or any personal inconvenience it may cause you.
- 13 Your final vote must reflect your conscientious belief
- 14 as to how the issue should be decided.
- 15 Now, I have virtually finished with my charge and my
- 16 instructions to you and I want to thank you for your patience
- 17 and attentiveness. I will send a copy of the charge in to you
- 18 so that you can use it during your deliberation. Again, please
- 19 remember that no single part of this charge is to be considered
- 20 in isolation. You are not to consider any one aspect of this
- 21 charge out of context. The entire charge is to be considered
- as an integrated statement and to be taken together.
- Now, I say this not because I think it's necessary but
- 24 it is the tradition of this court. I advise the jurors to be
- 25 polite and respectful to each other, as I am sure you will be

1363

86B7KAR4 Charge

1 in the course of your deliberations, so that each juror may

- 2 have his or her position made clear to all the others.
- 3 The foreperson has no greater authority than any other
- 4 juror but will be responsible for signing all communications to
- 5 the court and for handing them to the marshal during
- 6 deliberations. You should elect one person to act as
- 7 foreperson at the outset of your deliberations. I sometimes
- 8 suggest that it is easier to elect Juror 1, that is Ms. Young,
- 9 but sometimes Juror 1 doesn't want to act as foreperson. So
- 10 you all can elect whomever you want. That is your prerogative.
- 11 The manner in which the jury conducts its deliberations, of
- 12 course, is completely within your discretion. You may follow
- any procedure that you choose, provided that each juror is
- 14 presented with ample opportunity to express his or her view.
- 15 That way when you do reach a verdict you will know that it is a
- 16 just one, made with the full participation of all the jurors
- 17 and that you have faithfully discharged your oath. I remind
- 18 you once again that your duty is to act without fear or favor
- 19 and that you must decide the issues on trial based solely on
- 20 the evidence and my instructions on the law.
- 21 Thank you very much. I just want a word with counsel
- 22 to see if I misread any part of the charge.
- 23 (Continued on next page)

24

25

1364 Charge 86B7KAR4

1	(At the sidebar)
2	THE COURT: Any objections?
3	MR. RUBINSTEIN: No, your Honor, not by the defense.
4	MR. KWOK: No, your Honor.
5	THE COURT: OK.
6	(Continued on next page)
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1365

86B7KAR4 Charge

- 1 (In open court)
- 2 THE COURT: I think the alternates will be coming back
- 3 in. I will excuse them on the record. I don't think there is
- 4 any record that the two alternates have been excused, and I
- 5 think I have to do it.
- 6 MR. RUBINSTEIN: Can we approach for one moment?
- 7 THE COURT: Sure.
- 8 (At the sidebar)
- 9 MR. RUBINSTEIN: Judge, I know you usually discharge
- 10 alternates jurors, but am I correct that Juror 8 is supposed to
- 11 leave on Friday?
- 12 THE COURT: Not available Monday.
- MR. RUBINSTEIN: Not available Monday.
- 14 THE COURT: So, you have two and a half days.
- 15 MR. RUBINSTEIN: I think we should be all right. All
- 16 right.
- 17 MR. KWOK: I think we should be fine.
- 18 MR. RUBINSTEIN: If they promise not to retry the
- 19 case.
- 20 THE COURT: OK. All right.
- 21 (Continued on next page)

22

23

24

25

1 (In open court)

2	THE COURT: Well, at this time it's my duty to excuse
3	alternate jurors, I guess you were 3 and 4, Mr. Richburg and
4	Ms. Ippolito. You may not realize that one of my duties is to
5	make well, I do think you realize because of the comment I
6	made earlier in the trial about making sure the jurors weren't
7	asleep but one of my duties is to make sure that jurors are
8	paying attention. And I have noticed that both of were you
9	paying attention throughout the trial and were very attentive,
10	more than just paying attention, and I really want to thank you
11	for your service.
12	In civil cases we allow alternates to sit on the jury,
13	but in criminal cases there is a requirement that there be 12
14	jurors and not more. So, at this time I want to excuse you and
15	thank you for your public service. I appreciate it.
16	And what Mr. Rubinstein said in his summation about
17	public service of jurors is I think very accurate. I think he
18	may have picked that up from me in a previous trial we had, but
19	in any event I really regard it as very high public service,
20	and I will give the jury a more full explanation of why I think
21	that when the trial is over.
22	So, Mr. Richburg and Ms. Ippolito, are excused.
23	(Alternates excused)
24	Then I have the duty of asking Mr. Monteguedo to swear
25	in the marshal now. I usually tell the jury that they should

1	listen closely to this, because you will get a kick out of it.							
2	I think it was written well over a hundred years ago, let's							
3	say, and some of the language is a little out of date.							
4	(Marshal sworn)							
5	THE COURT: All right. The jury is excused to							
6	commence your deliberations and to have lunch. That's probably							
7	number one, have lunch. I hope it's there.							
8	DEPUTY COURT CLERK: It's downstairs. I have to go							
9	and get it.							
10	THE COURT: He has to go and get it.							
11	(Jury retires to deliberate at 1:22 p.m.)							
12	THE COURT: I want to thank counsel for their							
13	courteousness and professionalism during the trial. I							
14	appreciate it very much. Good luck to both sides, and I will							
15	be here.							
16	MR. RUBINSTEIN: Thank you, your Honor.							
17	MR. KWOK: Thank you, your Honor.							
18	(Luncheon recess)							
19	(Continued on next page)							
20								
21								
22								
23								
24								
25								

1	AFTERNOON SESSION							
2	2:25 p.m.							
3	(Jury not present)							
4	THE COURT: I understand we have some sort of dispute.							
5	As has been related to me, the defense wants the indictment							
6	sent in total without redaction, and the government wants it							
7	sent in with the forfeiture allegation redacted.							
8	MR. RUBINSTEIN: That's correct.							
9	THE COURT: That's the issue?							
10	MR. RUBINSTEIN: Yes, your Honor.							
11	THE COURT: Obviously they're not supposed to							
12	determine the forfeiture allegations, so I would say what about							
13	my just sending it in and then with a note saying here is the							
14	indictment, you will note that there are forfeiture allegations							
15	but those allegations are not before you and not matters that							
16	you have to concern yourselves with, something like that? How							
17	does that deal with it?							
18	MR. KWOK: I think an instruction along those lines							
19	would suffice. Our only concern is that there is a mention in							
20	paragraph 2A of at least \$390,000. They may get confused as to							
21	where that number came from. And obviously they haven't been							
22	instructed about any forfeiture allegations in the indictment,							
23	so our only concern is that it will cause more confusion than							
24	necessary, and so an instruction along those lines							
25	THE COURT: I can understand why you feel it should be							

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86B7KAR4

1 redacted, but the defense does not want to redact it.

- 2 You don't want it redacted?
- 3 MR. RUBINSTEIN: No, your Honor. I don't have a
- 4 problem with your Honor's --
- 5 THE COURT: Well, it's in the indictment, so let me
- 6 fashion a note.
- 7 "Here is a copy of the indictment. You will note it
- 8 contains a forfeiture allegation. Those allegations are
- 9 irrelevant to your decision" --
- 10 MR. KWOK: -- "and you should not consider it in any
- 11 way in your deliberations."
- 12 THE COURT: Is that all right?
- MR. RUBINSTEIN: Yes.
- MR. EVERDELL: Your Honor, also I think it may be even
- 15 clearer if we say, "You will note there is a forfeiture
- 16 allegation on page 2 of the indictment."
- 17 THE COURT: Well, I've gone too far now.
- 18 Here is the note. I have it it marked as Court
- 19 Exhibit 1.
- DEPUTY COURT CLERK: No, that's going to be Court
- 21 Exhibit 3.
- THE COURT: Court Exhibit 3.
- 23 DEPUTY COURT CLERK: Court Exhibit one was the
- 24 exhibit. Court Exhibit 2 was the charge. This will be 3. And
- 25 the indictment is Court Exhibit 4.

1 THE	COURT:	Hand	it	to	counsel	before	we	send	it	in.
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- 2 MR. KWOK: That's satisfactory to the government
- 3 government. Thank you, your Honor.
- 4 THE COURT: All right, Mr. Rubinstein?
- 5 MR. RUBINSTEIN: That's fine.
- 6 THE COURT: OK.
- 7 All right.
- 8 (Time noted 3:25; jury not present)
- 9 THE COURT: They want all of Benedict's testimony?
- 10 And Exhibit 110, 111, 114 and 115.
- MR. RUBINSTEIN: All I would say is those are all
- 12 summaries.
- 13 THE COURT: Well, they're the audit, aren't they? The
- 14 government isn't here. Oh, they are.
- THE COURT: Have you seen the note?
- MR. KWOK: We have, your Honor.
- MR. EVERDELL: We're pulling the exhibits now.
- 18 THE COURT: Maybe I better read it into the record.
- 19 This is Court Exhibit 5, received from the jury at
- 3:12, and signed by Ms. Young. It says.
- 21 "1. Bob Benedict's testimony.
- 22 "2. Number 110.
- 23 "3. Number 111.
- 24 "4. 114
- 25 "5. 115.

- 1 "6. Original budget.
- 2 "7. Revised approved budget.
- 3 "8. Nonapproved subsequent budget revisions."
- 4 My recollection is we only have some of the budget
- 5 revisions, not all of the budget revisions. Am I wrong?
- 6 MR. EVERDELL: No, I think we have the revised budget
- 7 submissions that were not approved. I think what your Honor
- 8 may be referring to is the quarterly financial reports.
- 9 THE COURT: Oh, that's right.
- 10 MR. EVERDELL: But the exhibits, I think we have the
- 11 exhibits that they want.
- 12 THE COURT: Well, we have to go through the testimony
- 13 of Benedict.
- MR. KWOK: How does your Honor like to proceed with
- 15 the testimony? Do we do a read-back?
- 16 THE COURT: Whenever you've got anything ready, let's
- 17 send it in. It's 3:25. They've got to be kept busy. We can't
- 18 hold back.
- MR. RUBINSTEIN: We have to redact if there is any
- 20 objections.
- 21 THE COURT: I don't remember if there is much in
- 22 Benedict's direct or cross that requires redaction, but maybe
- 23 there is.
- 24 MR. RUBINSTEIN: I don't either, but maybe there is.
- 25 THE COURT: You have to cut out the pages where the

- 1 jury wasn't present. But as far as redaction goes, there were
- 2 very few objections in either direct or cross, I believe.
- 3 So, let's divide it up so we all don't look at the
- 4 same copy. Do you want my copy?
- 5 DEPUTY COURT CLERK: Defense counsel doesn't have a
- 6 copy of the copy of the transcript.
- 7 THE COURT: What I'm talking about is dividing up the
- 8 duties, so one of you goes through page so and so and the other
- 9 goes through such and such.
- 10 MR. RUBINSTEIN: If the court will give us their
- 11 transcript, I will tell the government what pages I have.
- 12 THE COURT: What about before we get started on that,
- what about the other exhibits, do we have those?
- MR. KWOK: We do, your Honor.
- 15 MR. EVERDELL: Your Honor, how do we propose to mark
- 16 what they are for the jury? I'm not sure the jury is going to
- 17 know that --
- 18 THE COURT: I will give them a note.
- 19 MR. EVERDELL: We just want to be able to identify
- which numbers.
- 21 THE COURT: In response to your note, I'm sending you
- 22 in government's exhibits, Bob Benedict's testimony, the revised
- 23 approved budget, and then I will identify them by exhibit
- 24 number. So it's clear, so you make a clear record of what is
- 25 and isn't sent in.

- 1 MR. EVERDELL: I just want to be sure they know which
- 2 is which.
- 3 THE COURT: Have you got 110, 111, 114 and 115?
- 4 MR. EVERDELL: We have those, your Honor.
- 5 DEPUTY COURT CLERK: Do you want to send those three
- 6 exhibits in, Judge?
- 7 THE COURT: I do. I want the other ones too.
- 8 DEPUTY COURT CLERK: Right. I just don't know if you
- 9 want to send them all together or --
- 10 THE COURT: As many as they have ready.
- DEPUTY COURT CLERK: 110, 111, 114 and 115, Judge, we
- 12 will send those?
- 13 THE COURT: What about the budget, do we have those?
- MR. EVERDELL: Yeah, I'm just marking them "original
- 15 approved budget for Government's 14 and revised approved
- budget" for 22, and "unapproved budget" for Government's
- 17 Exhibits 31, 32, 33, 34, 35 and 36. Or "unapproved budget
- 18 requests". And I will put the numbers down, 31, 32 ...
- 19 The unapproved budget requests are 31 through 36. And
- 20 I am putting sticky notes on them.
- 21 Actually if you have a rubberband we can rubberband
- them together.
- 23 THE COURT: Is there one nonapproved budget or two
- 24 nonapproved budget?
- MR. EVERDELL: It's six.

- 1 THE COURT: Oh, I've got it.
- 2 MR. EVERDELL: So, I will hand these up to Robert.
- 3 THE COURT: To the jurors, I will read the note I
- 4 propose to send in.
- 5 "In response to your note, here are Exhibits 110, 111,
- 6 114 and 115; original budget, GX14; revised budget approved,
- 7 GX22; Nonapproved subsequent budget, GX31, 32, 33, 34, 35, 36.
- 8 "We are working on Mr. Benedict's testimony."
- 9 MR. KWOK: That's fine with the government. I
- 10 actually have the lines ready to be redacted for Mr. Benedict's
- 11 testimony, if your Honor would like to --
- 12 THE COURT: It's all redacted?
- 13 MR. KWOK: I think there are only two places that need
- 14 redaction.
- 15 THE COURT: Well, why don't we send this in. I don't
- 16 know how long it will take to get agreement on the redactions.
- 17 And I will send this note in with it, if there is no objection
- 18 by counsel. It's Court Exhibit 6.
- 19 MR. KWOK: That's fine. Thank you, your Honor.
- THE COURT: While Mr. Monteguedo is doing that, let's
- see what we can do on Mr. Benedict's testimony.
- 22 MR. KWOK: Your Honor, I believe Mr. Benedict's
- 23 testimony starts at page 960 on the transcript.
- 24 THE COURT: Mr. Rubinstein has my copy, so I'm not
- 25 sure. Have we given him the pages of proposed deletions?

- 1 Mr. Rubinstein?
- 2 MR. RUBINSTEIN: Yes, your Honor. I'm working on the
- 3 cross.
- 4 THE COURT: Were you only doing direct?
- 5 MR. KWOK: I was doing direct, but I actually went
- 6 through the whole thing.
- 7 THE COURT: Mr. Rubinstein, I don't know if it will
- 8 help you, but Mr. Kwok has indicated where he thinks the
- 9 redactions are. How are we coming?
- MR. KWOK: Getting there.
- 11 THE COURT: How many pages do we have to read, or is
- 12 it better to redact it?
- MR. RUBINSTEIN: No, I think it's better -- there are
- 14 not that many, but there are a lot more than the government
- 15 suggests.
- 16 I'm almost there. I just want to show the government
- some that are not major but that I ...
- 18 THE COURT: Sorry?
- 19 MR. RUBINSTEIN: They're not major, but let me show
- 20 the government the portions that I think could be redacted.
- We are in agreement.
- 22 THE COURT: Well, how are we going to make the
- 23 redaction? Read it? How long is it?
- 24 MR. KWOK: It's quite long actually. I think our
- 25 preference is to to send in a copy and just redact using a

- 1 black highlighter of some sort.
- 2 MR. RUBINSTEIN: Most of the redactions, Judge, are
- 3 just a few lines, so I wouldn't have a problem with that.
- 4 THE COURT: Then let's do it that way. Let's get it
- 5 started.
- 6 MR. RUBINSTEIN: The only thing I would suggest is --
- 7 THE COURT: Bring back a final so Mr. Rubinstein can
- 8 see them.
- 9 MR. KWOK: Certainly.
- 10 THE COURT: So he can see that you made them
- 11 correctly.
- 12 Let's move, otherwise they may make a decision.
- 13 MR. EVERDELL: We're going to make a photocopy of your
- 14 Honor's bigger version so it's easy to read. We will redact it
- 15 and bring it back.
- THE COURT: You are using my copy?
- MR. EVERDELL: Of the transcript.
- THE COURT: Do you have to make copies?
- 19 MR. EVERDELL: We can make copies or just instruct the
- jury not to peel off the white tape.
- 21 MR. RUBINSTEIN: That's fine. Instruct them not to
- 22 peel off the white tape.
- 23 THE COURT: Can I have my note back?
- I have the note. Are you ready? Counsel, are you
- 25 ready?

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- 1 MR. KWOK: OK. Your Honor, I think we have an
- 2 agreement. The transcript is redacted with the approval of
- 3 Mr. Rubinstein and the government, and I think we also should
- 4 send in the blow-ups, because they are the actual exhibits,
- 5 these big boards, Exhibits 114 and 115.
- 6 THE COURT: I sent in 114 and 115.
- 7 MR. KWOK: I understand, but as I understand it these
- 8 are the ones that are actually marked.
- 9 THE COURT: Well, I gave what you gave me which had
- 10 things marked 114 and 115. I don't know whether Mr. Rubinstein
- 11 consents to this.
- 12 MR. RUBINSTEIN: If they have 114 and 115, I don't
- 13 think they need the blow-up version.
- 14 THE COURT: If we started off that way, I think they
- 15 would be entitled to it, but I don't think we ought to send
- 16 duplicate exhibits in.
- 17 MR. KWOK: OK, that's fine. Can I hand up the
- 18 redacted transcript?
- 19 THE COURT: All right. Then I have drafted a note to
- 20 the jurors saying, "Here is the testimony of Mr. Benedict that
- 21 you requested." And I signed that note, and below that I have
- 22 written in, "You are ordered not to remove the white tape."
- Is that what you want?
- 24 MR. KWOK: I think that's fine. We also, after we ran
- 25 out of the white tape, we used a black marker. I suppose if

2	don't know whether an additional instruction is necessary to
3	that effect.
4	THE COURT: What does he want me to say? "Or the
5	black line"? I can't tell them to remove the black lines.
6	MR. KWOK: "Or attempt to see through the black line".
7	MR. RUBINSTEIN: I think they will understand it,
8	Judge. There are no smoking guns that have been redacted; it's
9	just objection sustained.
10	THE COURT: It's adequate, "You are not to remove the
11	white tapes"? Is that adequate?
12	MR. KWOK: Fine.
13	THE COURT: Then the note is Exhibit 7. The
14	transcript will be Court Exhibit 8.
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1 you hold it up, you can really see it under the light, but I

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(5:25; jury not present)

THE COURT: Mr. Monteguedo informs me that the marshals have indicated that the jury has a verdict.

Bring the jury in.

(Jury present)

THE COURT: Please be seated. Ladies and gentlemen, Mr. Monteguedo reports that the marshals have reported that you have reached a verdict, and I will ask Mr. Monteguedo to take the verdict.

DEPUTY COURT CLERK: Ladies and gentlemen of the jury, please answer to your presence as your name is called.

(Jury roll called; jury present)

DEPUTY COURT CLERK: Foreperson please stand.

As to Count One, with respect to Count One of indictment, S2 07 Crim. 541 (RPP), how do you find the defendant Daniel B. Karron. Did you answer guilty or not guilty?

> THE FOREPERSON: Guilty.

DEPUTY COURT CLERK: Thank you. Please be seated.

Ladies and gentlemen of the jury, please listen to your verdict as it stands recorded. With respect to Count One of indictment, S2 07 Crim. 541 (RPF), how could you find the defendant Daniel B Karron? You answered guilty.

(Jury polled; each juror answered in the affirmative)

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Verdict

THE COURT: Well, ladies and gentlemen, I never comment on a verdict, and I do like to comment, however, on jury service. And as I told the alternates, one of my duties is to watch the jury, keep an eye on them, make sure that no one is falling asleep. I had a few questions about Juror 3 at one point, but I noticed that although she sat back in her chair she kept her eyes open and was fully aware of what was

going on. But that's what my job is in part.

So one of the problems is, and one of the reasons I don't comment upon verdicts is because I other duties that I have to think about, whether under the law of evidence the question is appropriate, and there are a number of rules in the law of evidence that apply, how the questions is framed and whether it's an appropriate question, whether it's relevant, what have you. So I have other things to do besides listening to the actual testimony and watching the jurors and what have you.

But what I really want to mention is how important jury service is in this country. In most countries in Europe there are no juries. The only country that has juries is Great Britain, Australia and some in Canada, and even there in most cases they have done away with juries. It is an expenditure, and it requires a lot more time to have a jury trial than it does to have a nonjury trial.

In this country almost all the trials are jury trials.

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Now, why is that important? Well, some years ago, before Hungary came out from behind the iron curtain, I went with a number of other judges and lawyers to Hungary, and we were invited there to discuss their new constitution, and I don't know that we added much. I found in fact that the people in Hungary that we were talking to were very intelligent people and not only knew all about how our Constitution worked but they also knew how all the other Constitutions in the world worked. And there are a lot of Constitutions in the world actually, and a lot of them have traditions that are very similar to ours, and in fact Russia has a Constitution and it provided for a lot of the things that are provided for in our Constitution. The only problem was who decided whether those rights applied. The state had the sole determination. was no right by the people to bring suits in the courts challenging the state.

In any event, what I found was that there was great dissatisfaction of the system of justice in Hungary, and the reason was this: Judges decided everything. Judges were trained at the university to become judges, and when they got out of university they became junior judges, and then they moved up and became more senior judges. It was a profession just as if you were a doctor you became a judge. And you became a judge if you were a member of the Communist party.

And if you didn't, and if you weren't a member of the Communist

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party, these people felt you didn't get a fair shake in court, whether it be a civil or criminal case. And here in this country it's true judges are appointed by the President in the case of federal judges, and they are elected to some posts in the state courts, but they are also appointed judges in the state courts, and it's true that that means there is a certain amount of political input. And I happen to think that's overstated. In other words, I don't think people do decide -certainly district court judges I am convinced don't decide cases because they came from some political party. I mean we are appointed by some president, one or another, but there are stories in the paper and on television, on your talk shows, wondering who appointed that judge, well, he is going to decide such and such. Well, if we didn't have jurors, they would be saying that about the cases that come up for trial, and what confidence would the public have in the fairness of the procedure? If they believe that politics decided the lawsuits in the courts, they would, or that would be the talk.

So, what does the jury system do? Well, you saw Mr. Monteguedo here pull the names out of the hat, call them. No one knows anything about your political background. No one can challenge that you are independent determiners of the facts. And that's the great thing about jury service, it's the validation of our criminal justice system in our country. It doesn't mean you have to agree with every decision a jury

(Jury excused)

reaches throughout the country. But remember when you are criticizing them, if you do criticize them, that they heard the evidence, you didn't. Nor did the reporters report all the evidence. They saw the witnesses that testified, reporters come in and out of the courtroom and come and go. They don't hear everything. So, you don't always get -- it may be that you don't always get a fair shake in the press.

I haven't tried a case with television, but I recently had a case before me, still before me -- I haven't decided it yet, but it had a lot of notoriety and you should read what the papers in England said that I did and said and what have you. You couldn't believe it. At least I couldn't believe it.

All I'm saying is you the jury are the great validaters of our system of justice. That's what is so important about jury service, because each one of you when you serve are an independent person reviewing the facts and the evidence. It's much better than having a judge be in that position, because it makes it clear that things aren't decided on politics.

So I want to thank you for your service, and I am sorry to hold you to listen to me talk. And I guess I will tell you the third great lie, and that is that your checks are in the mail. So you are discharged with my thanks and the thanks of the court.

1 THE COURT: I guess I better look at a sentencing 2 September 11: I better wait for Mr. Monteguedo to tell 3 It takes more than 90 days, doesn't it? 4 MR. KWOK: I'm not sure. 5 THE COURT: October 14th or 15th? I don't know what 6 the holidays are. Mr. Rubinstein? 7 MR. RUBINSTEIN: Neither do I, Judge. Any day is OK. 8 MR. KWOK: Same for the government. 9 THE COURT: Do any of you know about the religious 10 holidays on that period? 11 Apparently Yom Kippur is the 14th or the 15th of 12 October, so that may be a bad time. 13 Why don't I put it down for September 11th, and if it's an inconvenient date, we will adjourn it to an appropriate 14 15 date. 16 MR. RUBINSTEIN: Thank you, your Honor. MR. KWOK: Thank you, your Honor. 17 18 THE COURT: All right. 19 MR. KWOK: Your Honor, the government does have an 20 application to make. We would move to modify the bail 21 conditions of the defendant. 2.2 THE COURT: Well, you will have to remind me what they 23 are. 24 MR. KWOK: I believe at the time the defendant was

first arraigned he was released on \$50,000 personal

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recognizance bond, cosigned by two people that the government approved, and he did surrender his passport, and he was ordered to make no applications, and his travel restrictions were limited to the District of Columbia, Philadelphia, the District of Connecticut and the Southern District of New York.

It's the government's position that the defendant poses a flight risk. We understand the defendant was a professor. He was unemployed for a number of years before he got the grant. Now that he is convicted I don't believe that any federal agency will award him a grant. He has recently sold his condominium in New York. We are not aware of any strong family ties the defendant has in New York, and as defense counsel pointed out in his summation the defendant also has ties in Canada. And so for all of those reasons I think that --

THE COURT: Well, that was just a vacation, right?

Canada? He didn't have any ties in Canada, did he?

MR. RUBINSTEIN: It's where he had the operation, in Canada.

THE COURT: Oh, I see. I didn't even know that the operation --

MR. RUBINSTEIN: Well, I didn't think it was appropriate to state that in summation.

THE COURT: I'm not suggesting. I just didn't -- I thought Canada was a vacation.

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1	86B7KAR4 Verdict
1	MR. RUBINSTEIN: He doesn't have any ties to Canada,
2	your Honor; it's just a lot cheaper in Canada than it is in the
3	United States.
4	THE COURT: What about postoperative care?
5	MR. RUBINSTEIN: That was in 2003, your Honor.
6	THE COURT: That doesn't require him to go back for
7	medical reasons?
8	MR. RUBINSTEIN: No, your Honor. 2003.
9	THE COURT: OK. I just don't know anything about the
10	whole area.
11	MR. KWOK: In any event, your Honor, for all of those
12	reasons, and because of our calculation
13	THE COURT: You want to limit Canada? I don't think
14	Mr. Rubinstein Mr. Rubinstein says it doesn't matter,
15	Canada, right?
16	MR. RUBINSTEIN: Right.
17	THE COURT: So, what else am I supposed to restrict
18	it? What restrictions are you asking for?
19	MR. KWOK: I'm asking for a more stringent set of bail
20	conditions than were originally set forth.
21	THE COURT: Well, I'm asking you what ones you're

THE COURT: Well, I'm asking you what ones you're asking for.

MR. KWOK: I propose at the very least an electronic monitor, strict regular pretrial supervision.

THE COURT: What kind of monitoring?

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1 MR. KWOK: Electronic monitoring. THE COURT: Mr. Rubinstein? 2 MR. RUBINSTEIN: Your Honor, we are talking about a 3 defendant who has an aging, sick mother who was in the hospital 4 as recently as a month ago on a respirator. 5 THE COURT: Where does she live? 6 MR. RUBINSTEIN: She lives in Long Beach, your Honor. 7 THE COURT: Long Beach, California? 8 9 MR. RUBINSTEIN: Long Beach, New York, your Honor. 10 And his brother was in court the other day. He has a brother. 11 He has a daughter who goes to school in upstate New York. And 12 he stayed for this trial. I don't see any reason that the 13 government should want to restrict him. He is not going 14 anywhere. He doesn't have a passport, and there is no place 15 for him to go. So, I would ask your Honor to continue him on 16 the bail conditions that have been previously set. 17 THE COURT: Well, he has a mother in Long Beach and a 18 brother in where? 19 MR. RUBINSTEIN: New Jersey. 20 THE COURT: New Jersey? 21 MR. RUBINSTEIN: Actually she has a home at the 22 moment. She is in a nursing home in Staten Island, his mother. 23 THE COURT: Is that the entire family? 24 MR. RUBINSTEIN: He has a sister in New Jersey. 25 THE COURT: Another sister in New Jersey?

1	MR. RUBINSTEIN: He has another brother in New Palls.
2	THE COURT: Well, there are some family ties,
3	Mr. Kwok. I can see why you would limit other areas, but
4	geographical limits, what reason would there be, other than
5	the I don't even know what the sentence would be here.
.6	MR. KWOK: I think based on the very rough
7	calculation, I think the defendant would be at offense level
8	20, a Criminal History Category I. Think he is facing a
9	guidelines range of somewhere in the 30s.
10	THE COURT: And what monetary what monetary is
11	it based on 2B1.1?
12	MR. KWOK: It's based on 2B1.1.
13	THE COURT: All right. What figure are you using for
14	loss?
15	MR. KWOK: I'm using the figure as presented to the
16	jury, about half a million dollars of loss.
17	THE COURT: Well, I don't think you will be able to
18	show that.
19	So it's a base level of
20	MR. KWOK: of six, your Honor.
21	THE COURT: of six. And do you have any reason to
22	believe what reason have you got to believe that he would
23	flee?
24	MR. KWOK: Well, because of the likely sentence that
25	he is facing because of the lack of any real assets that the

defendant has at this time. He doesn't have a job as far as we know, and he is not likely to be able to get an award of another federal grant in light of his conviction.

THE COURT: But most people don't look for federal grants. That's a small percentage of the opportunities that would be available to him.

MR. RUBINSTEIN: He has been offered a position at Rensselaer College, so I don't know if it's possible for him to take it. So he is more than employable. He is a very respected person.

THE COURT: Rensselaer Polytechnic Institute?

MR. RUBINSTEIN: Yes, your Honor.

THE COURT: Near Albany.

MR. KWOK: I was going to say, your Honor, I can't speak for my colleagues in the civil division, but I think they are contemplating filing a civil complaint to get treble damages based on the amount we showed the government was at loss for.

THE COURT: Treble damages under what statute?

MR. KWOK: I don't know.

THE COURT: It's not an antitrust case.

MR. KWOK: I don't know the name of the statute, but if your Honor recalls, there was a civil assistant who appeared before your Honor a while back while we had a status conference.

Verdict

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1	THE COURT: I don't recall that.
2	MR. KWOK: He might be able to
3	THE COURT: That doesn't mean anything.
4	MR. KWOK: He might be able to
5	THE COURT: I have had a lot of conferences.
6	MR. RUBINSTEIN: That makes two of us. I don't recall
7	it either. Maybe it's a senior thing.
8	MR. KWOK: In any event, my only point is that the
9	defendant, in addition to whatever custodial sentence your
10	Honor may impose, is also likely going to face a huge monetary
11	judgment.
12	THE COURT: Then what you have is a bankruptcy and he
13	starts over. They can do what they want.
14	I don't see the grounds for putting a monitor on him.
15	He has shown up here to court every time, a little late
16	sometimes, but he's been here at the trial.
17	I can understand why you don't want him to go to he
18	has surrendered his passport documents and you don't want
19	him to go to Canada. You can restrict that. But why shouldn't
20	he be able to go to New York, New Jersey and Connecticut?
21	MR. KWOK: I don't think he would be precluded
22	necessarily from going to those places if he is placed on
23	regular supervision. He just needs to be in touch with his
24	pretrial services officer as to his whereabouts.
25	THE COURT: I do think he ought to be under pretrial

	13:
	86B7KAR4 Verdict
1	services supervision. I agree with that.
2	He hasn't been under pretrial services supervision, I
3	gather.
4	MR. KWOK: I do not believe he was.
5	MR. RUBINSTEIN: No, your Honor.
6	THE COURT: Well, I think that he should be under
7	pretrial services supervision. And what are the regular terms
8	of pretrial services supervision?
9	MR. KWOK: I can't remember an exact time frame. As I
10	understand it, often times it's up to the discretion of the
11	pretrial services officer as to what he or she deems necessary.
12	But there is a regular reporting requirement.
13	THE COURT: Once a week? All right. So let them know
14	and advise the pretrial services officer of any travel he
15	intends to make so that the pretrial services office can be
16	MR. RUBINSTEIN: Excuse me?
17	THE COURT: If the pretrial officer has any concern
18	about travel, he can ask the clerk for my permission.
19	MR. RUBINSTEIN: Thank you, your Honor.
20	MR. KWOK: Thank you, your Honor.
21	THE COURT: All right.
22	MR. RUBINSTEIN: So, should he go tomorrow to pretrial

THE COURT: Yes, sir. All right.

MR. RUBINSTEIN: Thank you, your Honor.

services?

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Verdict

1	MR. KWOK: Thank you, your Honor.
2	MR. EVERDELL: Thank you.
3	MR. RUBINSTEIN: Have a good day, sir.
4	THE COURT: Anything else?
5	MR. RUBINSTEIN: Good night, your Honor
6	THE COURT: All right. Good night.
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Final Version 6/11/08, 1:25 p.m.

U.S. v. Daniel Karron 07 Cr. 541 (RPP)

JURY CHARGE

INTRODUCTION

MEMBERS OF THE JURY, WE ARE NOW AT THAT STAGE OF THE TRIAL WHERE YOU WILL SOON UNDERTAKE YOUR FINAL FUNCTION AS JURORS. I KNOW YOU WILL TRY THE ISSUES THAT HAVE BEEN PRESENTED TO YOU ACCORDING TO THE OATH WHICH YOU HAVE TAKEN AS JURORS IN WHICH YOU PROMISED THAT YOU WILL WELL AND TRULY TRY THE ISSUES IN THIS CASE AND RENDER A TRUE VERDICT. IF YOU FOLLOW THAT OATH AND TRY THE ISSUES WITHOUT FEAR OR PREJUDICE OR BIAS OR SYMPATHY, YOU WILL ARRIVE AT A TRUE AND JUST VERDICT.

THE GOVERNMENT AS A PARTY

THE FACT THAT THE PROSECUTION IS BROUGHT IN THE NAME OF THE UNITED STATES OF AMERICA ENTITLES THE GOVERNMENT TO NO GREATER CONSIDERATION THAN THAT ACCORDED TO ANY OTHER PARTY TO A LITIGATION. BY THE SAME TOKEN, IT IS ENTITLED TO NO LESS CONSIDERATION. ALL PARTIES, WHETHER GOVERNMENT OR INDIVIDUALS, STAND AS EQUALS AT THE BAR OF JUSTICE.

ROLE OF THE COURT

YOU HAVE NOW HEARD ALL OF THE EVIDENCE IN THE CASE AS WELL AS THE FINAL ARGUMENTS OF THE LAWYERS FOR THE PARTIES.

MY DUTY AT THIS POINT IS TO INSTRUCT YOU AS TO THE LAW. IT IS YOUR DUTY TO ACCEPT THESE INSTRUCTIONS OF LAW AND APPLY THEM TO THE FACTS AS YOU WILL DETERMINE THEM, JUST AS IT HAS BEEN MY DUTY TO PRESIDE OVER THE TRIAL AND DECIDE WHAT TESTIMONY AND EVIDENCE IS RELEVANT UNDER THE LAW FOR YOUR CONSIDERATION.

ON THESE LEGAL MATTERS, YOU MUST TAKE THE LAW AS I GIVE IT TO YOU. IF ANY ATTORNEY HAS STATED A LEGAL PRINCIPLE DIFFERENT FROM ANY THAT I STATE TO YOU IN MY INSTRUCTIONS, IT IS MY INSTRUCTIONS THAT YOU MUST FOLLOW.

YOU SHOULD NOT SINGLE OUT ANY INSTRUCTION AS ALONE STATING THE LAW, BUT YOU SHOULD CONSIDER MY INSTRUCTIONS AS A WHOLE WHEN YOU RETIRE TO DELIBERATE IN THE JURY ROOM.

YOU SHOULD NOT, ANY OF YOU, BE CONCERNED ABOUT THE WISDOM OF ANY RULE THAT I STATE. REGARDLESS OF ANY OPINION THAT YOU MAY HAVE AS TO WHAT THE LAW MAY BE -- OR OUGHT TO BE -- IT WOULD VIOLATE YOUR SWORN DUTY TO BASE A VERDICT UPON ANY OTHER VIEW OF THE LAW THAN THAT WHICH I GIVE YOU.

NOW, AFTER LISTENING TO MY INSTRUCTIONS ABOUT THE LAW, YOU WILL THEN DETERMINE HOW THIS CASE SHOULD BE DECIDED.

ROLE OF THE JURY (EVIDENCE AND NON-EVIDENCE)

AS I HAVE SAID, THE MEMBERS OF THE JURY ARE THE SOLE AND EXCLUSIVE JUDGES OF THE FACTS. YOU DECIDE BASED UPON THE WEIGHT OF THE EVIDENCE; YOU DETERMINE THE CREDIBILITY OF THE WITNESSES; YOU RESOLVE SUCH CONFLICTS AS THERE MAY BE IN THE TESTIMONY, AND YOU DRAW WHATEVER REASONABLE INFERENCES YOU DECIDE TO DRAW FROM THE FACTS AS YOU WILL DETERMINE THEM.

IN DETERMINING THE FACTS, YOU MUST RELY UPON YOUR OWN
RECOLLECTION OF THE EVIDENCE. WHAT THE LAWYERS HAVE SAID IN THEIR
OPENING STATEMENTS, IN THEIR CLOSING ARGUMENTS, IN THEIR OBJECTIONS, OR IN
THEIR QUESTIONS IS NOT EVIDENCE. IN THIS CONNECTION, YOU SHOULD BEAR IN
MIND THAT A QUESTION PUT TO A WITNESS IS NEVER EVIDENCE. IT IS ONLY THE
ANSWER WHICH IS EVIDENCE. QUESTIONS ARE RELEVANT ONLY TO THE EXTENT
THEY ENABLE YOU TO UNDERSTAND THE ANSWER. NOR IS ANYTHING I MAY HAVE
SAID DURING THE TRIAL OR SUMMATIONS OR MAY SAY DURING THESE
INSTRUCTIONS WITH RESPECT TO A FACT MATTER TO BE TAKEN IN SUBSTITUTION
FOR YOUR OWN INDEPENDENT RECOLLECTION. WHAT I SAY IS NOT EVIDENCE.

THE EVIDENCE BEFORE YOU CONSISTS OF THE ANSWERS GIVEN BY THE WITNESSES -- THE SWORN TESTIMONY THAT THEY GAVE FROM THE STAND, AS YOU RECALL IT -- AND THE EXHIBITS THAT WERE RECEIVED IN EVIDENCE.

YOU HAVE HEARD EVIDENCE IN THE FORM OF STIPULATIONS THAT CONTAIN FACTS THAT WERE AGREED TO BE TRUE. YOU MUST ACCEPT THE FACTS IN THOSE STIPULATIONS AS TRUE.

THE EVIDENCE DOES NOT INCLUDE QUESTIONS. ONLY THE ANSWERS ARE EVIDENCE. BUT YOU MAY NOT CONSIDER ANY ANSWER THAT I DIRECTED YOU TO DISREGARD OR THAT I DIRECTED STRUCK FROM THE RECORD. DO NOT CONSIDER SUCH ANSWERS.

SINCE YOU ARE THE SOLE AND EXCLUSIVE JUDGES OF THE FACTS, I HAVE NOT MEANT AND DO NOT MEAN BY MY WORDS OR ACTS TO INDICATE ANY OPINION AS TO THE FACTS OR WHAT YOUR VERDICT SHOULD BE. THE RULINGS THAT I HAVE MADE DURING THE TRIAL ARE NOT ANY INDICATION OF MY VIEWS OF WHAT YOUR DECISION SHOULD BE AS TO WHETHER OR NOT THE GUILT OF THE DEFENDANT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT.

I ALSO ASK YOU TO DRAW NO INFERENCE FROM THE FACT THAT UPON OCCASION I ASKED QUESTIONS OF CERTAIN WITNESSES. THESE QUESTIONS WERE ONLY INTENDED FOR CLARIFICATION OR TO EXPEDITE MATTERS AND CERTAINLY WERE NOT INTENDED TO SUGGEST ANY OPINIONS ON MY PART AS TO THE VERDICT YOU SHOULD RENDER OR WHETHER ANY OF THE WITNESSES MAY HAVE BEEN MORE CREDIBLE THAN ANY OTHER WITNESS. YOU ARE EXPRESSLY TO UNDERSTAND THAT THE COURT HAS NO OPINION AS TO THE VERDICT YOU SHOULD RENDER IN THIS CASE.

AS TO THE FACTS, LADIES AND GENTLEMEN, YOU ARE THE EXCLUSIVE JUDGES. YOU HAVE THE RESPONSIBILITY OF REVIEWING THE EVIDENCE, WEIGHING

THE CREDIBILITY OF THE WITNESSES, SEPARATING THE IMPORTANT FROM THE UNIMPORTANT, AND MAKING THE FACTUAL DETERMINATIONS WHICH BEAR ON THE GUILT OR LACK OF GUILT OF THE DEFENDANT. YOU ARE TO PERFORM THE DUTY OF FINDING THE FACTS WITHOUT BIAS OR PREJUDICE AS TO ANY PARTY.

CONDUCT OF COUNSEL

IT IS THE DUTY OF THE ATTORNEY FOR EACH SIDE OF A CASE TO OBJECT WHEN THE OTHER SIDE OFFERS TESTIMONY OR OTHER EVIDENCE WHICH THE ATTORNEY BELIEVES IS NOT PROPERLY ADMISSIBLE. COUNSEL ALSO HAVE THE RIGHT AND DUTY TO ASK THE COURT TO MAKE RULINGS OF LAW AND TO REQUEST CONFERENCES IN THE ROBING ROOM OR AT THE SIDE BAR, OUT OF THE HEARING OF THE JURY. ALL THOSE QUESTIONS OF LAW MUST BE DECIDED BY ME, THE COURT. YOU SHOULD NOT SHOW ANY PREJUDICE AGAINST ANY ATTORNEY OR HIS OR HER CLIENT BECAUSE THE ATTORNEY OBJECTED TO THE ADMISSIBILITY OF EVIDENCE, ASKED FOR A CONFERENCE OUT OF THE HEARING OF THE JURY, OR ASKED THE COURT FOR A RULING ON THE LAW.

AS I ALREADY INDICATED, MY RULINGS ON THE ADMISSIBILITY OF EVIDENCE DO NOT INDICATE ANY OPINION ABOUT THE WEIGHT OR EFFECT OF SUCH EVIDENCE. YOU ARE THE SOLE JUDGES OF THE CREDIBILITY OF ALL WITNESSES AND THE WEIGHT AND EFFECT OF ALL THE EVIDENCE.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

NOW, THERE ARE TWO TYPES OF EVIDENCE WHICH YOU MAY PROPERLY USE IN DECIDING WHETHER A DEFENDANT IS GUILTY OR NOT GUILTY.

ONE TYPE OF EVIDENCE IS CALLED DIRECT EVIDENCE. DIRECT EVIDENCE IS A WITNESS' TESTIMONY AS TO WHAT HE SAW, HEARD, OR OBSERVED. IN OTHER WORDS, WHEN A WITNESS TESTIFIES ABOUT WHAT IS KNOWN TO HIM OF HIS OWN KNOWLEDGE BY VIRTUE OF HIS OWN SENSES --WHAT HE SEES, FEELS, TOUCHES OR HEARS -- THAT IS CALLED DIRECT EVIDENCE.

CIRCUMSTANTIAL EVIDENCE IS EVIDENCE WHICH TENDS TO PROVE ONE FACT
BY PROOF OF OTHER FACTS. THERE IS A SIMPLE EXAMPLE OF CIRCUMSTANTIAL
EVIDENCE WHICH IS OFTEN USED IN THIS COURTHOUSE.

ASSUME THAT A WITNESS TESTIFIED THAT WHEN HE CAME INTO THE COURTHOUSE THIS MORNING, THE SUN WAS SHINING AND IT WAS A NICE DAY.

ASSUME HE TESTIFIED THAT SOMEONE WALKED INTO THE COURTROOM WITH AN UMBRELLA WHICH WAS DRIPPING WET, AND THAT SOMEBODY ELSE WALKED IN WITH A RAINCOAT WHICH WAS ALSO DRIPPING WET.

NOW, HE DOES NOT TESTIFY THAT HE LOOKED OUT OF THE COURTROOM AND SAW THAT IT WAS RAINING. SO THERE IS NO DIRECT EVIDENCE OF THAT FACT. BUT ON THE COMBINATION OF FACTS WHICH I HAVE ASKED YOU TO ASSUME, IT WOULD BE REASONABLE AND LOGICAL – IF YOU FOUND THE WITNESS'S TESTIMONY TO BE CREDIBLE – FOR YOU TO CONCLUDE THAT BETWEEN THE TIME HE TESTIFIED AND THE TIME THOSE PEOPLE WALKED IN, IT HAD STARTED TO RAIN.

THAT IS ALL THERE IS TO CIRCUMSTANTIAL EVIDENCE. YOU INFER ON THE BASIS OF REASON AND EXPERIENCE AND COMMON SENSE FROM AN ESTABLISHED FACT THE EXISTENCE OR THE NONEXISTENCE OF SOME OTHER FACT.

MANY FACTS, SUCH AS A PERSON'S STATE OF MIND, CAN RARELY BE PROVED BY DIRECT EVIDENCE.

CIRCUMSTANTIAL EVIDENCE IS OF NO LESS VALUE THAN DIRECT EVIDENCE; IT IS A GENERAL RULE THAT THE LAW MAKES NO DISTINCTION BETWEEN DIRECT AND CIRCUMSTANTIAL EVIDENCE, BUT SIMPLY REQUIRES THAT BEFORE CONVICTING THE DEFENDANT, THE JURY MUST BE SATISFIED THAT THE GOVERNMENT HAS PROVED THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT AFTER REVIEW OF ALL OF THE EVIDENCE IN THE CASE, DIRECT AND CIRCUMSTANTIAL.

DURING THE TRIAL YOU MAY HAVE HEARD THE ATTORNEYS USE THE TERM
"INFERENCE" AND IN THEIR ARGUMENTS THEY HAVE ASKED YOU TO INFER, ON THE
BASIS OF YOUR REASON, EXPERIENCE AND COMMON SENSE, FROM ONE OR MORE
ESTABLISHED FACTS THE EXISTENCE OF SOME OTHER FACT.

AN INFERENCE IS NOT A SUSPICION OR A GUESS. IT IS A REASONED, LOGICAL DECISION TO CONCLUDE THAT A DISPUTED FACT EXISTS ON THE BASIS OF ANOTHER FACT THAT YOU KNOW EXISTS.

THERE ARE TIMES WHEN DIFFERENT INFERENCES MAY BE DRAWN FROM
FACTS WHETHER BY DIRECT OR CIRCUMSTANTIAL EVIDENCE. THE GOVERNMENT
MAY ASK YOU TO DRAW ONE SET OF INFERENCES, WHILE THE DEFENSE MAY ASK
YOU TO DRAW ANOTHER. IT IS FOR YOU AND YOU ALONE TO DECIDE WHAT
INFERENCES YOU WILL DRAW.

THE PROCESS OF DRAWING INFERENCES FROM FACTS IN EVIDENCE IS NOT A MATTER OF GUESSWORK OR SPECULATION. AN INFERENCE IS A DEDUCTION OR A CONCLUSION WHICH YOU, THE JURY, ARE PERMITTED TO DRAW - BUT NOT

REQUIRED TO DRAW - FROM THE FACTS WHICH YOU FIND TO BE PROVEN BY EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. IN DRAWING AN INFERENCE, YOU SHOULD EXERCISE YOUR COMMON SENSE.

SO WHILE YOU ARE CONSIDERING THE EVIDENCE PRESENTED TO YOU, YOU ARE PERMITTED TO DRAW, FROM THE FACTS WHICH YOU FIND TO BE PROVEN, SUCH REASONABLE INFERENCES AS WOULD BE JUSTIFIED IN THE LIGHT OF YOUR EXPERIENCE.

HERE, AGAIN, LET ME REMIND YOU THAT WHETHER BASED UPON DIRECT OR CIRCUMSTANTIAL EVIDENCE, OR UPON LOGICAL OR REASONABLE INFERENCES DRAWN FROM SUCH EVIDENCE, YOU MUST BE SATISFIED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT BEFORE YOU MAY CONVICT.

CREDIBILITY OF WITNESSES

NOW, HOW DO YOU EVALUATE THE CREDIBILITY OR BELIEVABILITY OF THE WITNESSES?

YOU HAVE HAD AN OPPORTUNITY TO OBSERVE ALL OF THE WITNESSES. IT NOW IS YOUR JOB TO DECIDE HOW BELIEVABLE EACH WITNESS WAS IN HIS OR HER TESTIMONY. YOU ARE THE SOLE JUDGES OF THE CREDIBILITY OF EACH WITNESS AND OF THE IMPORTANCE OF HIS OR HER TESTIMONY.

IT MUST BE CLEAR TO YOU BY NOW THAT YOU ARE BEING CALLED UPON TO RESOLVE VARIOUS FACTUAL ISSUES UNDER THE INDICTMENT, IN THE FACE OF VERY DIFFERENT PICTURES PAINTED BY THE GOVERNMENT AND THE DEFENSE WHICH CANNOT BE RECONCILED. YOU WILL NOW HAVE TO DECIDE WHERE THE TRUTH LIES, AND AN IMPORTANT PART OF THAT DECISION WILL INVOLVE MAKING JUDGMENTS

ABOUT THE TESTIMONY OF THE WITNESSES YOU HAVE LISTENED TO AND OBSERVED. IN MAKING THOSE JUDGMENTS, YOU SHOULD CAREFULLY SCRUTINIZE ALL OF THE TESTIMONY OF EACH WITNESS, THE CIRCUMSTANCES UNDER WHICH EACH WITNESS TESTIFIED, AND ANY OTHER MATTER IN EVIDENCE WHICH MAY HELP YOU TO DECIDE THE TRUTH AND THE IMPORTANCE OF EACH WITNESS' TESTIMONY.

YOUR DECISION ON WHETHER OR NOT TO BELIEVE A WITNESS MAY DEPEND ON HOW THE WITNESS IMPRESSED YOU. WAS THE WITNESS CANDID, FRANK AND FORTHRIGHT? OR, DID THE WITNESS SEEM AS IF HE OR SHE WAS HIDING SOMETHING, OR BEING EVASIVE OR SUSPECT IN SOME WAY? HOW DID THE WAY THE WITNESS TESTIFIED ON DIRECT EXAMINATION COMPARE WITH HOW THE WITNESS TESTIFIED ON CROSS-EXAMINATION? WAS THE WITNESS CONSISTENT IN HIS OR HER TESTIMONY OR DID HE OR SHE CONTRADICT HIMSELF OR HERSELF? DID THE WITNESS APPEAR TO KNOW WHAT HE OR SHE WAS TALKING ABOUT AND DID THE WITNESS STRIKE YOU AS SOMEONE WHO WAS TRYING TO REPORT HIS OR HER KNOWLEDGE ACCURATELY?

HOW MUCH YOU CHOOSE TO BELIEVE A WITNESS MAY BE INFLUENCED BY THE WITNESS' BIAS. DOES THE WITNESS HAVE A RELATIONSHIP WITH THE GOVERNMENT OR THE DEFENDANT WHICH MAY AFFECT HOW HE OR SHE TESTIFIED? DOES THE WITNESS HAVE SOME INCENTIVE, LOYALTY OR MOTIVE THAT MIGHT CAUSE HIM OR HER TO SHADE THE TRUTH? OR DOES THE WITNESS HAVE SOME BIAS, PREJUDICE, OR HOSTILITY THAT MAY HAVE CAUSED THE WITNESS--CONSCIOUSLY OR NOT--TO GIVE YOU SOMETHING OTHER THAN A COMPLETELY ACCURATE ACCOUNT OF THE FACTS HE OR SHE TESTIFIED TO?

EVEN IF THE WITNESS WAS IMPARTIAL, YOU SHOULD CONSIDER WHETHER THE WITNESS HAD AN OPPORTUNITY TO OBSERVE THE FACTS HE OR SHE TESTIFIED ABOUT AND YOU SHOULD ALSO CONSIDER THE WITNESS' ABILITY TO EXPRESS HIMSELF OR HERSELF. ASK YOURSELVES WHETHER THE WITNESS' RECOLLECTION OF THE FACTS STANDS UP IN THE LIGHT OF ALL OTHER EVIDENCE.

IN OTHER WORDS, WHAT YOU MUST TRY TO DO IN DECIDING CREDIBILITY IS TO SIZE A PERSON UP IN LIGHT OF HIS OR HER DEMEANOR, THE EXPLANATIONS GIVEN, AND IN LIGHT OF ALL THE OTHER EVIDENCE IN THE CASE, JUST AS YOU WOULD DO IN ANY IMPORTANT MATTER WHERE YOU ARE TRYING TO DECIDE IF A PERSON IS TRUTHFUL, STRAIGHTFORWARD, AND ACCURATE IN HIS OR HER RECOLLECTION. IN DECIDING THE QUESTION OF CREDIBILITY, REMEMBER THAT YOU SHOULD USE YOUR COMMON SENSE, YOUR GOOD JUDGMENT, AND YOUR EXPERIENCE.

INTEREST IN OUTCOME

NOW, IN EVALUATING CREDIBILITY OF THE WITNESSES, YOU SHOULD TAKE INTO ACCOUNT ANY EVIDENCE THAT THE WITNESS WHO TESTIFIED MAY BENEFIT IN SOME WAY FROM THE OUTCOME OF THIS CASE. SUCH AN INTEREST IN THE OUTCOME CREATES A MOTIVE TO TESTIFY FALSELY AND MAY SWAY THE WITNESS TO TESTIFY IN A WAY THAT ADVANCES HIS OR HER OWN INTERESTS. THEREFORE, IF YOU FIND THAT ANY WITNESS WHOSE TESTIMONY YOU ARE CONSIDERING MAY HAVE AN INTEREST IN THE OUTCOME OF THIS TRIAL, THEN YOU SHOULD BEAR THAT

FACTOR IN MIND WHEN EVALUATING THE CREDIBILITY OF HIS OR HER TESTIMONY AND ACCEPT IT WITH GREAT CARE.

THIS IS NOT TO SUGGEST THAT EVERY WITNESS WHO HAS AN INTEREST IN THE OUTCOME OF A CASE WILL TESTIFY FALSELY. IT IS FOR YOU TO DECIDE TO WHAT EXTENT, IF AT ALL, THE WITNESS' INTEREST HAS AFFECTED OR COLORED HIS OR HER TESTIMONY.

GOVERNMENT EMPLOYEE WITNESS

YOU HAVE HEARD THE TESTIMONY OF GOVERNMENT EMPLOYEES. THE FACT THAT A WITNESS MAY BE A GOVERNMENT EMPLOYEE DOES NOT MEAN THAT HIS OR HER TESTIMONY IS NECESSARILY DESERVING OF MORE CONSIDERATION OR GREATER WEIGHT THAN THAT OF AN ORDINARY WITNESS. ALSO IT DOES NOT MEAN THAT HIS OR HER TESTIMONY IS NECESSARILY DESERVING OF LESS CONSIDERATION OR LESS WEIGHT THAN THAT OF AN ORDINARY WITNESS.

IT IS YOUR DECISION, AFTER REVIEWING ALL THE EVIDENCE, WHETHER TO ACCEPT THE TESTIMONY OF THE GOVERNMENT EMPLOYEE AND TO GIVE THAT TESTIMONY WHATEVER WEIGHT, IF ANY, YOU FIND IT DESERVES.

PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

THE DEFENDANT HAS PLEADED NOT GUILTY TO THE CHARGES IN THE INDICTMENT.

AS A RESULT OF THE DEFENDANT'S PLEAS OF NOT GUILTY, THE BURDEN IS ON THE PROSECUTION TO PROVE THE DEFENDANT IS GUILTY BEYOND A

REASONABLE DOUBT. THIS BURDEN NEVER SHIFTS TO THE DEFENDANT FOR
THE SIMPLE REASON THAT THE LAW NEVER IMPOSES UPON THE DEFENDANT IN
A CRIMINAL CASE THE BURDEN OR DUTY OF TESTIFYING, OR CALLING ANY
WITNESSES OR LOCATING OR PRODUCING ANY EVIDENCE.

THE LAW PRESUMES THE DEFENDANT TO BE INNOCENT OF ALL THE
CHARGES AGAINST HIM. I THEREFORE INSTRUCT YOU THAT THE DEFENDANT IS
TO BE PRESUMED BY YOU TO BE INNOCENT THROUGHOUT YOUR
DELIBERATIONS UNTIL SUCH TIME, IF IT EVER COMES, THAT YOU AS A JURY ARE
SATISFIED THAT THE GOVERNMENT HAS PROVEN HIM GUILTY BEYOND A
REASONABLE DOUBT.

THE DEFENDANT BEGAN THE TRIAL HERE WITH A CLEAN SLATE. THIS

PRESUMPTION OF INNOCENCE ALONE IS SUFFICIENT TO ACQUIT THE

DEFENDANT UNLESS YOU AS JURORS ARE UNANIMOUSLY CONVINCED BEYOND

A REASONABLE DOUBT OF HIS GUILT, AFTER A CAREFUL AND IMPARTIAL

CONSIDERATION OF ALL OF THE EVIDENCE IN THIS CASE. IF THE GOVERNMENT

FAILS TO SUSTAIN ITS BURDEN, YOU MUST FIND THE DEFENDANT NOT GUILTY.

THIS PRESUMPTION WAS WITH THE DEFENDANT WHEN THE TRIAL BEGAN AND REMAINS WITH HIM EVEN NOW AS I SPEAK TO YOU AND WILL CONTINUE WITH THE DEFENDANT INTO YOUR DELIBERATIONS UNLESS AND UNTIL YOU ARE CONVINCED THAT THE GOVERNMENT HAS PROVEN HIS GUILT BEYOND A REASONABLE DOUBT.

DEFENDANT'S RIGHT NOT TO TESTIFY

THE DEFENDANT, DANIEL KARRON, DID NOT TESTIFY IN THIS CASE.

UNDER OUR CONSTITUTION, A DEFENDANT HAS NO OBLIGATION TO TESTIFY OR

TO PRESENT ANY EVIDENCE, BECAUSE IT IS THE GOVERNMENT'S BURDEN TO

PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. THAT

BURDEN REMAINS WITH THE GOVERNMENT THROUGHOUT THE ENTIRE TRIAL

AND NEVER SHIFTS TO THE DEFENDANT. THE DEFENDANT IS NEVER REQUIRED

TO PROVE THAT HE IS INNOCENT.

YOU MAY NOT ATTACH ANY SIGNIFICANCE TO THE FACT THAT THE DEFENDANT DID NOT TESTIFY. NO ADVERSE INFERENCE AGAINST HIM MAY BE DRAWN BY YOU BECAUSE HE DID NOT TAKE THE WITNESS STAND. YOU MAY NOT CONSIDER THIS AGAINST THE DEFENDANT IN ANY WAY IN YOUR DELIBERATIONS IN THE JURY ROOM.

REASONABLE DOUBT

I HAVE SAID THAT THE GOVERNMENT MUST PROVE THAT THE

DEFENDANT IS GUILTY BEYOND A REASONABLE DOUBT. THE QUESTION

NATURALLY IS, "WHAT IS A REASONABLE DOUBT?" THE WORDS ALMOST

DEFINE THEMSELVES. IT IS A DOUBT BASED UPON REASON AND COMMON

SENSE. IT IS A DOUBT THAT A REASONABLE PERSON HAS AFTER CAREFULLY

WEIGHING ALL OF THE EVIDENCE. IT IS A DOUBT WHICH WOULD CAUSE A

REASONABLE PERSON TO HESITATE TO ACT IN A MATTER OF IMPORTANCE IN

HIS OR HER PERSONAL LIFE. PROOF BEYOND A REASONABLE DOUBT MUST,

THEREFORE, BE PROOF OF SUCH A CONVINCING CHARACTER THAT A
REASONABLE PERSON WOULD NOT HESITATE TO RELY AND ACT UPON IT IN THE
MOST IMPORTANT OF HIS OWN AFFAIRS. A REASONABLE DOUBT IS NOT A
CAPRICE OR WHIM; IT IS NOT A SPECULATION OR SUSPICION. IT IS NOT AN
EXCUSE TO AVOID THE PERFORMANCE OF AN UNPLEASANT DUTY. AND IT IS
NOT SYMPATHY.

IN A CRIMINAL CASE, THE BURDEN IS AT ALL TIMES UPON THE GOVERNMENT TO PROVE GUILT BEYOND A REASONABLE DOUBT. THE LAW DOES NOT REQUIRE THAT THE GOVERNMENT PROVE GUILT BEYOND ALL POSSIBLE DOUBT; PROOF BEYOND A REASONABLE DOUBT IS SUFFICIENT TO CONVICT. THIS BURDEN NEVER SHIFTS TO THE DEFENDANT, WHICH MEANS THAT IT IS ALWAYS THE GOVERNMENT'S BURDEN TO PROVE EACH OF THE ELEMENTS OF THE CRIMES CHARGED BEYOND A REASONABLE DOUBT.

IF, AFTER FAIR AND IMPARTIAL CONSIDERATION OF ALL OF THE EVIDENCE, YOU HAVE A REASONABLE DOUBT, IT IS YOUR DUTY TO ACQUIT THE DEFENDANT. ON THE OTHER HAND, IF AFTER FAIR AND IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE, YOU ARE SATISFIED OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT, YOU SHOULD VOTE TO CONVICT.

SYMPATHY

UNDER YOUR OATH AS JURORS YOU ARE NOT TO BE SWAYED BY SYMPATHY. YOU ARE TO BE GUIDED SOLELY BY THE EVIDENCE IN THIS CASE,

AND THE CRUCIAL, HARD-CORE QUESTION THAT YOU MUST ASK YOURSELVES
AS YOU SIFT THROUGH THE EVIDENCE IS: HAS THE GOVERNMENT PROVEN THE
GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT?

IT IS FOR YOU ALONE TO DECIDE WHETHER THE GOVERNMENT HAS
PROVEN THAT THE DEFENDANT IS GUILTY OF THE CRIMES CHARGED SOLELY ON
THE BASIS OF THE EVIDENCE AND SUBJECT TO THE LAW AS I CHARGE YOU. IT
MUST BE CLEAR TO YOU THAT ONCE YOU LET FEAR OR PREJUDICE OR BIAS OR
SYMPATHY INTERFERE WITH YOUR THINKING, THERE IS A RISK THAT YOU WILL
NOT ARRIVE AT A TRUE AND JUST VERDICT.

IF YOU HAVE A REASONABLE DOUBT AS TO THE DEFENDANT'S GUILT, YOU SHOULD NOT HESITATE FOR ANY REASON TO FIND A VERDICT OF ACQUITTAL.

BUT ON THE OTHER HAND, IF YOU SHOULD FIND THAT THE GOVERNMENT HAS MET ITS BURDEN OF PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT, YOU SHOULD NOT HESITATE BECAUSE OF SYMPATHY OR ANY OTHER REASON TO RENDER A VERDICT OF GUILTY.

PUNISHMENT

THE QUESTION OF POSSIBLE PUNISHMENT OF THE DEFENDANT IS OF NO CONCERN TO THE JURY AND SHOULD NOT, IN ANY SENSE, ENTER INTO OR INFLUENCE YOUR DELIBERATIONS. THE DUTY OF IMPOSING A SENTENCE ON ANY CONVICTED DEFENDANT RESTS EXCLUSIVELY UPON THE COURT -- THAT IS, UPON ME. YOUR FUNCTION IS TO WEIGH THE EVIDENCE IN THE CASE AND TO DETERMINE WHETHER OR NOT THE DEFENDANT IS GUILTY BEYOND A

REASONABLE DOUBT, SOLELY ON THE BASIS OF SUCH EVIDENCE. UNDER YOUR OATH AS JURORS, YOU CANNOT ALLOW A CONSIDERATION OF THE PUNISHMENT WHICH MAY BE IMPOSED UPON THE DEFENDANT, IF HE IS CONVICTED, TO INFLUENCE YOUR VOTE IN ANY WAY, OR, IN ANY SENSE, TO ENTER INTO YOUR DELIBERATIONS.

INDICTMENT IS NOT EVIDENCE

NOW, WITH THESE PRELIMINARY INSTRUCTIONS IN MIND, LET US TURN TO THE CHARGE AGAINST THE DEFENDANT, AS CONTAINED IN THE INDICTMENT. I REMIND YOU THAT AN INDICTMENT ITSELF IS NOT EVIDENCE. IT MERELY DESCRIBES THE CHARGE MADE AGAINST THE DEFENDANT. IT IS AN ACCUSATION. IT MAY NOT BE CONSIDERED BY YOU AS ANY EVIDENCE OR PROOF OF THE GUILT OF THE DEFENDANT. ONLY THE EVIDENCE OR THE LACK OF EVIDENCE PRESENTED HERE AT TRIAL BEFORE YOU IS RELEVANT TO THAT ISSUE.

THE INDICTMENT

THE DEFENDANT, DANIEL KARRON, IS FORMALLY CHARGED IN AN INDICTMENT WHICH CONTAINS ONE COUNT. BEFORE YOU BEGIN YOUR DELIBERATIONS, YOU WILL BE PROVIDED WITH A COPY OF THE INDICTMENT CONTAINING THE CHARGE.

COUNT ONE OF THE INDICTMENT CHARGES THAT FROM AT LEAST IN OR ABOUT OCTOBER 2001, UP THROUGH AND INCLUDING IN OR ABOUT JUNE 2003, DANIEL B. KARRON, THE PRESIDENT AND CHIEF TECHNICAL OFFICER OF A

COMPANY CALLED COMPUTER AIDED SURGERY, INC. (CASI), INTENTIONALLY MISAPPLIED \$5,000 AND MORE IN THE CARE, CUSTODY AND CONTROL OF CASI, WHILE IT WAS THE BENEFICIARY OF A FEDERAL GRANT OF MORE THAN \$10,000 A YEAR FROM THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, A FEDERAL ENTITY.

COUNT ONE

THE INDICTMENT READS AS FOLLOWS:

[THE COURT WILL READ THE INDICTMENT]

TITLE 18, UNITED STATES CODE, SECTION 666, READS, IN PERTINENT PART, AS FOLLOWS:

§ 666. Theft or bribery concerning programs receiving Federal funds

- (a) Whoever, if the circumstance described in subsection (b) of this section exists –
- (A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that
 - (i) is valued at \$5,000 or more, and
 - (ii) is owned by, or is under the care, custody, or control of such organization, government, or agency;
 - is guilty of a crime.
- (b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.
- (c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

COUNT ONE: THEFT OR MISAPPLICATION CONCERNING PROGRAMS RECEIVING FEDERAL FUNDS GENERAL INSTRUCTIONS (18 U.S.C. § 666)

IN ORDER TO SUSTAIN ITS BURDEN OF PROOF WITH RESPECT TO THE ALLEGATION IN COUNT ONE, THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT THE FOLLOWING FIVE ELEMENTS:

FIRST, AT THE TIME ALLEGED IN THE INDICTMENT, THE DEFENDANT WAS AN AGENT OF COMPUTER AIDED SURGERY, INC., OR CASI;

SECOND, IN A ONE-YEAR PERIOD, CASI RECEIVED A FEDERAL GRANT IN EXCESS OF \$10,000;

THIRD, DURING THAT ONE YEAR PERIOD, THE DEFENDANT WITHOUT AUTHORITY INTENTIONALLY MISAPPLIED THE GRANT MONEY;

<u>FOURTH</u>, THE MISAPPLIED GRANT MONEY WAS UNDER THE CARE, CUSTODY, OR CONTROL OF, CASI;

 $\underline{\it FIFTH},$ THE VALUE OF THE MONEY INTENTIONALLY MISAPPLIED BY THE DEFENDANT WAS AT LEAST \$5,000.

LET US NOW SEPARATELY CONSIDER THESE FIVE ELEMENTS.

FIRST ELEMENT: DEFENDANT WAS AN AGENT OF CASI

THE FIRST ELEMENT THE GOVERNMENT MUST PROVE BEYOND A
REASONABLE DOUBT IS THAT AT THE TIME ALLEGED IN THE INDICTMENT, THE
DEFENDANT WAS AN AGENT OF CASI.

THE TERM "AGENT" MEANS A PERSON AUTHORIZED TO ACT ON BEHALF
OF AN ORGANIZATION. EMPLOYEES, PARTNERS, DIRECTORS, OFFICERS,
MANAGERS, AND REPRESENTATIVES ARE ALL AGENTS OF AN ORGANIZATION.

SECOND ELEMENT: CASI RECEIVED FEDERAL FUNDS

THE SECOND ELEMENT THE GOVERNMENT MUST PROVE BEYOND A
REASONABLE DOUBT IS THAT IN A ONE-YEAR PERIOD, CASI RECEIVED FEDERAL
BENEFITS IN EXCESS OF \$10,000.

TO PROVE THIS ELEMENT, THE GOVERNMENT MUST ESTABLISH THAT CASI RECEIVED, DURING A ONE-YEAR PERIOD, BENEFITS IN EXCESS OF \$10,000 UNDER A FEDERAL PROGRAM INVOLVING A GRANT, CONTRACT, SUBSIDY, LOAN, GUARANTEE, INSURANCE, OR SOME OTHER FORM OF FEDERAL ASSISTANCE.

THE ONE-YEAR PERIOD MUST BEGIN NO MORE THAN 12 MONTHS BEFORE
THE DEFENDANT COMMITTED THE ACTS CHARGED IN THE INDICTMENT AND
MUST END NO MORE THAN 12 MONTHS AFTER THOSE ACTS. YOU CAN CHOOSE
ANY PERIOD OF FEDERAL FUNDING YOU WANT AS LONG AS YOU UNANIMOUSLY
FIND THAT THE ACTS OF MISAPPLICATION CHARGED IN THE INDICTMENT
OCCURRED IN THAT ONE YEAR PERIOD.

THIRD ELEMENT: INTENTIONAL MISAPPLICATION OF MONEY

THE THIRD ELEMENT THE GOVERNMENT MUST PROVE BEYOND A
REASONABLE DOUBT IS THAT THE DEFENDANT WITHOUT AUTHORITY
INTENTIONALLY MISAPPLIED MONEY. TO INTENTIONALLY MISAPPLY MONEY

MEANS TO USE MONEY UNDER THE CONTROL OF CASI KNOWING THAT SUCH USE IS UNAUTHORIZED OR UNJUSTIFIABLE OR WRONGFUL. INTENTIONAL MISAPPLICATION INCLUDES THE WRONGFUL USE OF THE MONEY FOR A PURPOSE THE DEFENDANT KNEW WAS UNAUTHORIZED, EVEN IF SUCH USE BENEFITED CASI IN SOME WAY.

IN THIS CASE, TO INTENTIONALLY MISAPPLY MONEY MEANS TO INTENTIONALLY APPLY THE GRANT MONEY RECEIVED BY CASI IN A MANNER WHICH THE DEFENDANT KNEW WAS UNAUTHORIZED UNDER THE TERMS AND CONDITIONS OF THE GRANT. MISAPPLICATION OF MONEY, HOWEVER, DOES NOT APPLY TO BONA FIDE SALARY, WAGES, FRINGE BENEFITS, OR OTHER COMPENSATION PAID, OR EXPENSES PAID OR REIMBURSED, IN THE USUAL COURSE OF BUSINESS.

AS I SAID, THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ACTED INTENTIONALLY IN MISAPPLYING GRANT MONEY. TO FIND THAT THE DEFENDANT ACTED INTENTIONALLY, YOU MUST BE SATISFIED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ACTED DELIBERATELY AND PURPOSEFULLY. THAT IS, THE DEFENDANT'S MISAPPLICATION MUST HAVE BEEN THE PRODUCT OF THE DEFENDANT'S CONSCIOUS OBJECTIVE TO SPEND THE MONEY FOR AN UNAUTHORIZED PURPOSE, RATHER THAN THE PRODUCT OF A MISTAKE OR ACCIDENT OR SOME OTHER INNOCENT REASON.

FOURTH ELEMENT: MISAPPLIED GRANT MONEY UNDER THE CONTROL OF **CASI**

THE FOURTH ELEMENT THE GOVERNMENT MUST PROVE BEYOND A
REASONABLE DOUBT IS THAT THE GRANT MONEY THAT WAS INTENTIONALLY
MISAPPLIED WAS IN THE CARE, CUSTODY, OR CONTROL OF, CASI. ALTHOUGH
THE WORDS "CARE," "CUSTODY," AND "CONTROL" HAVE SLIGHTLY DIFFERENT
MEANINGS, FOR THE PURPOSES OF THIS ELEMENT, THEY EXPRESS A SIMILAR
IDEA. ALL THAT IS NECESSARY IS THAT CASI HAD CONTROL OVER AND
RESPONSIBILITY FOR THE GRANT MONEY.

FIFTH ELEMENT: VALUE OF MISAPPLIED GRANT MONEY

THE FIFTH AND FINAL ELEMENT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT IS THAT THE VALUE OF THE INTENTIONALLY MISAPPLIED MONEY WAS AT LEAST \$5,000.

THE WORD "VALUE" MEANS FACE, PAR OR MARKET VALUE, OR COST
PRICE, EITHER WHOLESALE OR RETAIL, WHICHEVER IS GREATER. "MARKET
VALUE" MEANS THE PRICE A WILLING BUYER WOULD PAY A WILLING SELLER
AT THE TIME THE PROPERTY WAS INTENTIONALLY MISAPPLIED.

YOU MAY AGGREGATE OR ADD UP THE VALUE OF MONEY
INTENTIONALLY MISAPPLIED FROM A SERIES OF ACTS BY THE DEFENDANT TO
MEET THIS \$5,000 REQUIREMENT, SO LONG AS YOU FIND THAT EACH ACT OF
INTENTIONAL MISAPPLICATION WAS PART OF A SINGLE SCHEME BY THE
DEFENDANT TO MISAPPLY GRANT MONEY UNDER THE CARE, CUSTODY, AND
CONTROL OF CASI.

THE GOVERNMENT DOES NOT HAVE TO PROVE THAT THE PARTICULAR MONEY MISAPPLIED BY THE DEFENDANT WAS THE MONEY RECEIVED BY CASI AS A FEDERAL GRANT. IN OTHER WORDS, IT IS NOT NECESSARY FOR THE GOVERNMENT TO SHOW THAT THE INTENTIONALLY MISAPPLIED MONEY WAS TRACEABLE TO THE ACTUAL FEDERAL GRANT RECEIVED BY THE ORGANIZATION. THUS, IF THE GOVERNMENT ESTABLISHES THAT CASI RECEIVED MORE THAN \$10,000 IN FEDERAL AID DURING A ONE-YEAR PERIOD, AND THAT, DURING THAT PERIOD, THE DEFENDANT MISAPPLIED FUNDS VALUED AT MORE THAN \$5,000 UNDER THE CARE, CUSTODY, AND CONTROL OF CASI, THE GOVERNMENT WILL HAVE SATISFIED ITS BURDEN WITH RESPECT TO THIS ELEMENT. MONEY IS FUNGIBLE, AND THE GOVERNMENT NEED NOT TRACE THE \$5,000 OR MORE ALLEGED TO BE INTENTIONALLY MISAPPLIED BACK TO THE FEDERAL GRANT.

VENUE

IN ADDITION TO THE ELEMENTS OF THE OFFENSES THAT I HAVE

EXPLAINED, YOU MUST CONSIDER WHETHER ANY ACT IN FURTHERANCE OF THE

CRIME CHARGED IN THE INDICTMENT OCCURRED WITHIN THE SOUTHERN

DISTRICT OF NEW YORK. AS I HAVE INSTRUCTED YOU, THE SOUTHERN DISTRICT

OF NEW YORK INCLUDES MANHATTAN AND THE BRONX.

I SHOULD NOTE THAT ON THIS ISSUE -- AND THIS ISSUE ALONE -- THE
GOVERNMENT NEED NOT PROVE VENUE BEYOND A REASONABLE DOUBT, BUT
ONLY BY A MERE PREPONDERANCE OF THE EVIDENCE. THUS, THE

GOVERNMENT HAS SATISFIED ITS VENUE OBLIGATIONS IF YOU CONCLUDE THAT IT IS MORE LIKELY THAN NOT THAT ANY ACT IN FURTHERANCE OF THE CRIME CHARGED OCCURRED IN THE SOUTHERN DISTRICT OF NEW YORK.

PREPARATION OF WITNESSES

YOU HAVE HEARD EVIDENCE DURING THE TRIAL THAT WITNESSES HAVE DISCUSSED THE FACTS OF THE CASE AND THEIR TESTIMONY WITH THE LAWYERS BEFORE THE WITNESSES APPEARED IN COURT.

ALTHOUGH YOU MAY CONSIDER THAT FACT WHEN YOU ARE

EVALUATING A WITNESS'S CREDIBILITY, I SHOULD TELL YOU THAT THERE IS

NOTHING EITHER UNUSUAL OR IMPROPER ABOUT A WITNESS MEETING WITH

LAWYERS BEFORE TESTIFYING SO THAT THE WITNESS CAN BE AWARE OF THE

SUBJECTS HE OR SHE WILL BE QUESTIONED ABOUT, FOCUS ON THOSE SUBJECTS

AND HAVE THE OPPORTUNITY TO REVIEW RELEVANT EXHIBITS BEFORE BEING

QUESTIONED ABOUT THEM. SUCH CONSULTATION HELPS CONSERVE YOUR

TIME AND THE COURT'S TIME. IN FACT, IT WOULD BE UNUSUAL FOR A LAWYER

TO CALL A WITNESS WITHOUT SUCH CONSULTATION.

AGAIN, THE WEIGHT YOU GIVE TO THE FACT OR THE NATURE OF THE WITNESS'S PREPARATION FOR HIS OR HER TESTIMONY AND WHAT INFERENCES YOU DRAW FROM SUCH PREPARATION ARE MATTERS COMPLETELY WITHIN YOUR DISCRETION.

EXPERT TESTIMONY

YOU HAVE HEARD TESTIMONY FROM WHAT WE CALL AN EXPERT
WITNESS. AN EXPERT WITNESS IS A PERSON WHO BY EDUCATION OR
EXPERIENCE HAS ACQUIRED LEARNING OR EXPERIENCE IN A SCIENCE OR A
SPECIALIZED AREA OF KNOWLEDGE. SUCH WITNESSES ARE PERMITTED TO GIVE
THEIR OPINIONS AS TO RELEVANT MATTERS IN WHICH THEY PROFESS TO BE
EXPERT AND GIVE THEIR REASONS FOR THEIR OPINIONS. EXPERT TESTIMONY IS
PRESENTED TO YOU ON THE THEORY THAT SOMEONE WHO IS EXPERIENCED IN
THE FIELD CAN ASSIST YOU IN UNDERSTANDING THE EVIDENCE OR IN
REACHING AN INDEPENDENT DECISION ON THE FACTS.

NOW, YOUR ROLE IN JUDGING CREDIBILITY APPLIES TO EXPERTS AS WELL AS TO OTHER WITNESSES. YOU SHOULD CONSIDER THE EXPERT OPINIONS THAT WERE RECEIVED IN EVIDENCE IN THIS CASE AND GIVE THEM AS MUCH OR AS LITTLE WEIGHT AS YOU THINK THEY DESERVE. IF YOU SHOULD DECIDE THAT THE OPINION OF AN EXPERT WAS NOT BASED ON SUFFICIENT EDUCATION OR EXPERIENCE OR ON SUFFICIENT DATA, OR IF YOU SHOULD CONCLUDE THAT THE TRUSTWORTHINESS OR CREDIBILITY OF AN EXPERT IS QUESTIONABLE FOR ANY REASON, OR IF THE OPINION OF THE EXPERT WAS OUTWEIGHED, IN YOUR JUDGMENT, BY OTHER EVIDENCE IN THE CASE, THEN YOU MIGHT DISREGARD THE OPINION OF THE EXPERT ENTIRELY OR IN PART.

ON THE OTHER HAND, IF YOU FIND THE OPINION OF AN EXPERT IS BASED ON SUFFICIENT DATA, EDUCATION AND EXPERIENCE, AND THE OTHER

EVIDENCE DOES NOT GIVE YOU REASON TO DOUBT HIS CONCLUSIONS, YOU WOULD BE JUSTIFIED IN PLACING GREAT RELIANCE ON HIS TESTIMONY.

PERSONS NOT ON TRIAL

IF YOU CONCLUDE THAT OTHER PERSONS MAY HAVE BEEN INVOLVED IN CRIMINAL ACTS CHARGED IN THE INDICTMENT, YOU MAY NOT DRAW ANY INFERENCE, FAVORABLE OR UNFAVORABLE, TOWARD EITHER THE GOVERNMENT OR THE DEFENDANT FROM THE FACT THAT THOSE PERSONS ARE NOT NAMED AS DEFENDANTS IN THIS INDICTMENT OR ARE NOT PRESENT AT THIS TRIAL.

IN ADDITION, YOU SHOULD NOT SPECULATE AS TO THE REASONS THAT INDIVIDUALS OTHER THAN THE DEFENDANT ARE NOT DEFENDANTS IN THIS TRIAL. THOSE MATTERS ARE WHOLLY OUTSIDE YOUR CONCERN AND HAVE NO BEARING ON YOUR FUNCTION AS JURORS IN THIS TRIAL.

UNCALLED WITNESS - EQUALLY AVAILABLE TO BOTH SIDES

BOTH THE GOVERNMENT AND THE DEFENDANT HAVE THE SAME POWER

TO SUBPOENA WITNESSES TO TESTIFY ON THEIR BEHALF. IF A POTENTIAL

WITNESS COULD HAVE BEEN CALLED BY THE GOVERNMENT OR BY THE

DEFENDANT AND NEITHER PARTY CALLED THE WITNESS, THEN YOU MAY DRAW

THE CONCLUSION THAT THE TESTIMONY OF THE ABSENT WITNESS MIGHT HAVE

BEEN UNFAVORABLE TO THE GOVERNMENT OR TO THE DEFENDANT OR TO BOTH PARTIES.

ON THE OTHER HAND, IT IS EQUALLY WITHIN YOUR PROVINCE TO DRAW NO INFERENCE AT ALL FROM THE FAILURE A PARTY TO CALL A WITNESS.

YOU SHOULD REMEMBER THAT THERE IS NO DUTY ON EITHER SIDE TO CALL A WITNESS WHOSE TESTIMONY WOULD BE MERELY CUMULATIVE OF TESTIMONY ALREADY IN EVIDENCE, OR WHO WOULD MERELY PROVIDE ADDITIONAL TESTIMONY TO FACTS ALREADY IN EVIDENCE.

PARTICULAR INVESTIGATIVE TECHNIQUES NOT REQUIRED

YOU HAVE HEARD REFERENCE, IN THE TESTIMONY AND IN THE ARGUMENTS OF DEFENSE COUNSEL IN THIS CASE, ABOUT THE FACT THAT CERTAIN INVESTIGATIVE TECHNIQUES WERE NOT USED BY LAW ENFORCEMENT AUTHORITIES. THERE IS NO LEGAL REQUIREMENT THAT THE GOVERNMENT PROVE ITS CASE THROUGH ANY PARTICULAR MEANS. WHILE YOU ARE TO CAREFULLY CONSIDER THE EVIDENCE PRESENTED BY THE GOVERNMENT, YOU NEED NOT SPECULATE AS TO WHY THEY USED THE TECHNIQUES THEY DID, OR WHY THEY DID NOT USE OTHER TECHNIQUES. THE GOVERNMENT IS NOT ON TRIAL, AND LAW ENFORCEMENT TECHNIQUES ARE NOT YOUR CONCERN.

YOUR CONCERN IS TO DETERMINE WHETHER OR NOT, BASED ON THE EVIDENCE OR LACK OF EVIDENCE, THE GUILT OF THE DEFENDANT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT.

EVIDENCE OF GOOD CHARACTER

THERE IS TESTIMONY IN THIS CASE OF THE PREVIOUS GOOD CHARACTER OF THE DEFENDANT. THIS TESTIMONY IS NOT TO BE TAKEN BY YOU AS THE WITNESSES' OPINION AS TO WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY. THAT QUESTION IS FOR YOU ALONE TO DETERMINE. INDEED, SOME OF THE CHARACTER WITNESSES TESTIFIED THAT THEY HAD NO DIRECT, PERSONAL KNOWLEDGE OF THE FACTS AND CIRCUMSTANCES WHICH WERE THE FOCUS OF THIS CASE. YOU SHOULD CONSIDER EVIDENCE OF GOOD CHARACTER TOGETHER WITH ALL OTHER FACTS AND ALL THE OTHER EVIDENCE IN DETERMINING WHETHER THE PROSECUTION HAS SUSTAINED ITS BURDEN OF PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. EVIDENCE OF GOOD CHARACTER MAY IN ITSELF CREATE A REASONABLE DOUBT WHERE WITHOUT SUCH EVIDENCE NO REASONABLE DOUBT EXISTS. BUT IF, FROM ALL THE EVIDENCE, YOU ARE SATISFIED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY, A SHOWING THAT THE DEFENDANT PREVIOUSLY ENJOYED A REPUTATION OF GOOD CHARACTER DOES NOT JUSTIFY OR EXCUSE THE OFFENSE, AND YOU SHOULD NOT ACQUIT THE DEFENDANT MERELY BECAUSE YOU BELIEVE THAT HE HAD BEEN A PERSON OF GOOD REPUTE.

CHARTS AND SUMMARIES

SOME OF THE EXHIBITS THAT WERE ADMITTED INTO EVIDENCE WERE CHARTS. THESE CHARTS WERE INTRODUCED BASICALLY AS SUMMARIES. THEY

ARE NOT DIRECT EVIDENCE. THEY ARE SUMMARIES OF THE EVIDENCE, AND ARE ADMITTED AS AIDS TO YOU. THEY ARE NOT IN AND OF THEMSELVES ANY EVIDENCE. THEY ARE INTENDED ONLY TO BE OF ASSISTANCE TO YOU IN CONSIDERING THE EVIDENCE DURING YOUR DELIBERATIONS.

IN PRESENTING THE EVIDENCE WHICH YOU HAVE HEARD, IT IS CLEARLY EASIER AND MORE CONVENIENT TO UTILIZE SUMMARY CHARTS THAN TO PLACE ALL OF THE RELEVANT DOCUMENTS IN FRONT OF YOU. IT IS UP TO YOU TO DECIDE WHETHER THOSE CHARTS FAIRLY AND CORRECTLY PRESENT THE INFORMATION IN THE TESTIMONY AND THE DOCUMENTS ADMITTED IN EVIDENCE. THE CHARTS ARE NOT TO BE CONSIDERED BY YOU AS DIRECT PROOF OF ANYTHING. THEY ARE MERELY GRAPHIC DEMONSTRATIONS OF WHAT THE UNDERLYING TESTIMONY AND DOCUMENTS ARE.

TO THE EXTENT THAT THE CHARTS CONFORM WITH WHAT YOU DETERMINE THE UNDERLYING EVIDENCE TO BE, YOU SHOULD ACCEPT THEM. BUT ONE WAY OR THE OTHER, REALIZE THAT THE CHART IS NOT IN AND OF ITSELF DIRECT EVIDENCE. THEY ARE MERELY VISUAL AIDS. THEY ARE NOTHING MORE.

RIGHT TO SEE EXHIBITS AND HEAR TESTIMONY; COMMUNICATIONS WITH COURT

YOU ARE ABOUT TO GO INTO THE JURY ROOM AND BEGIN YOUR
DELIBERATIONS. IF DURING THOSE DELIBERATIONS YOU WANT TO SEE OR
HEAR ANY OF THE EXHIBITS, THEY WILL BE SENT TO YOU IN THE JURY ROOM

UPON REQUEST. IF YOU WANT ANY OF THE TESTIMONY READ, THAT CAN ALSO BE DONE. BUT PLEASE REMEMBER THAT IT IS NOT ALWAYS EASY TO LOCATE WHAT YOU MIGHT WANT, SO TRY TO BE AS SPECIFIC AS YOU POSSIBLY CAN IN REQUESTING EXHIBITS OR PORTIONS OF THE TESTIMONY WHICH YOU MAY WANT.

YOUR REQUESTS FOR EXHIBITS OR TESTIMONY -- IN FACT ANY
COMMUNICATION WITH THE COURT -- SHOULD BE MADE TO ME IN WRITING,
SIGNED BY YOUR FOREPERSON, AND GIVEN TO ONE OF THE MARSHALS. I WILL
RESPOND TO ANY QUESTIONS OR REQUESTS YOU HAVE AS PROMPTLY AS
POSSIBLE EITHER IN WRITING OR BY HAVING YOU RETURN TO THE COURTROOM
SO I CAN SPEAK TO YOU IN PERSON. IN ANY EVENT, DO NOT, IN ANY NOTE OR
OTHERWISE, TELL ME OR ANYONE ELSE HOW YOU OR ANY GROUP OF YOU HAVE
VOTED OR PROPOSE TO VOTE ON THE ISSUE OF THE DEFENDANT'S GUILT UNTIL
AFTER A UNANIMOUS VERDICT IS REACHED. IN OTHER WORDS, DO NOT TELL
ME OR ANYONE ELSE WHAT YOUR NUMERICAL DIVISION IS -- HOW MANY THINK
ONE WAY AND HOW MANY THINK ANOTHER -- IF YOU ARE DIVIDED AT ANY
POINT ON HOW TO DECIDE THE CASE BECAUSE UNTIL YOU HAVE REACHED A
VERDICT, YOU HAVE NO VERDICT.

SUBMITTING THE INDICTMENT

I AM SENDING A COPY OF THE INDICTMENT INTO THE JURY ROOM FOR
YOU TO HAVE DURING YOUR DELIBERATIONS. YOU MAY USE IT TO READ THE
CRIME WITH WHICH THE DEFENDANT IS CHARGED WITH COMMITTING. YOU

ARE REMINDED, HOWEVER, THAT AN INDICTMENT IS MERELY AN ACCUSATION AND IS NOT TO BE USED BY YOU AS ANY PROOF OF THE CONDUCT CHARGED.

DUTY TO CONSULT AND NEED FOR UNANIMITY

AS ALREADY EXPLAINED IN THESE INSTRUCTIONS, THE GOVERNMENT, TO PREVAIL ON THE CHARGE IN THE INDICTMENT, MUST PROVE THE ESSENTIAL ELEMENTS OF THAT COUNT IN THE INDICTMENT BEYOND A REASONABLE DOUBT. IF IT SUCCEEDS, YOUR VERDICT SHOULD BE GUILTY AS TO THAT COUNT; IF IT FAILS, IT SHOULD BE NOT GUILTY AS TO THAT COUNT. TO REPORT A VERDICT, YOUR VOTE MUST BE UNANIMOUS.

YOUR FUNCTION IS TO WEIGH THE EVIDENCE IN THE CASE AND DETERMINE WHETHER OR NOT THE DEFENDANT IS GUILTY OF THE COUNT IN THE INDICTMENT, SOLELY UPON THE BASIS OF SUCH EVIDENCE.

VERDICT FORM

NOW, TO AID YOU IN YOUR DELIBERATIONS, AND SO THAT A PROPER RECORD CAN BE MADE OF YOUR VERDICT, THE COURT HAS PREPARED A FORM OF VERDICT. I AM ASKING THAT THE VERDICT FORM BE SIGNED BY THE FOREPERSON AND BE FILED WITH THE COURT. WHEN YOU HAVE UNANIMOUSLY AGREED ON YOUR VERDICT, THEN THE FOREPERSON WILL FILL IT IN AND SIGN IT, AND YOU TELL THE MARSHAL YOU HAVE REACHED A VERDICT. THEN YOU WILL BE ASKED TO COME BACK INTO OPEN COURT AND THE CLERK WILL ASK WHETHER YOUR VERDICT IS UNANIMOUS.

[DISTRIBUTE AND READ VERDICT FORM]

NOW, EACH JUROR IS ENTITLED TO HIS OR HER OPINION; EACH SHOULD, HOWEVER, EXCHANGE VIEWS WITH HIS OR HER FELLOW JURORS. THAT IS THE VERY PURPOSE OF JURY DELIBERATION -- TO DISCUSS AND CONSIDER THE EVIDENCE; TO CONSIDER THE ARGUMENTS OF FELLOW JURORS; TO PRESENT YOUR INDIVIDUAL VIEWS; TO CONSULT WITH ONE ANOTHER; AND TO REACH AN AGREEMENT BASED SOLELY AND ENTIRELY ON THE EVIDENCE OR THE LACK OF EVIDENCE -- IF YOU CAN DO SO WITHOUT VIOLATION TO YOUR OWN INDIVIDUAL JUDGMENT.

EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, AFTER CONSIDERATION WITH YOUR FELLOW JURORS OF THE EVIDENCE IN THE CASE.

BUT YOU SHOULD NOT HESITATE TO CHANGE AN OPINION WHICH, AFTER DISCUSSION WITH YOUR FELLOW JURORS, APPEARS INCORRECT.

HOWEVER, IF, AFTER CAREFULLY CONSIDERING ALL THE EVIDENCE AND THE ARGUMENTS OF YOUR FELLOW JURORS, YOU HOLD A CONSCIENTIOUS VIEW THAT DIFFERS FROM THE OTHERS, YOU ARE NOT TO CHANGE YOUR POSITION SIMPLY BECAUSE YOU ARE OUTNUMBERED. IF THEY DO NOT CONVINCE YOU THAT YOUR POSITION IS INCORRECT, YOU SHALL ADHERE TO YOUR POSITION REGARDLESS OF THE LATENESS OF THE HOUR OR ANY PERSONAL INCONVENIENCE IT MAY CAUSE YOU.

YOUR FINAL VOTE MUST REFLECT YOUR CONSCIENTIOUS BELIEF AS TO HOW THE ISSUES SHOULD BE DECIDED.

CONCLUSION -- CHARGE AS A WHOLE, DUTY TO CONSULT, SELECTION OF A FOREPERSON

NOW, I HAVE VIRTUALLY FINISHED WITH THE CHARGE AND MY
INSTRUCTIONS TO YOU AND I WANT TO THANK YOU AGAIN FOR YOUR PATIENCE
AND ATTENTIVENESS. I WILL SEND A COPY OF THE CHARGE IN TO YOU SO THAT
YOU CAN USE IT DURING YOUR DELIBERATIONS. AGAIN, PLEASE REMEMBER
THAT NO SINGLE PART OF THIS CHARGE IS TO BE CONSIDERED IN ISOLATION.
YOU ARE NOT TO CONSIDER ANY ONE ASPECT OF THIS CHARGE OUT OF
CONTEXT. THE ENTIRE CHARGE IS TO BE CONSIDERED AS AN INTEGRATED
STATEMENT AND TO BE TAKEN TOGETHER.

NOW, I SAY THIS NOT BECAUSE I THINK IT IS NECESSARY BUT IT IS THE TRADITION OF THIS COURT. I ADVISE THE JURORS TO BE POLITE AND RESPECTFUL TO EACH OTHER AS I AM SURE YOU WILL BE IN THE COURSE OF YOUR DELIBERATIONS SO THAT EACH JUROR MAY HAVE HIS OR HER POSITION MADE CLEAR TO ALL THE OTHERS.

THE FOREPERSON HAS NO GREATER AUTHORITY THAN ANY OTHER JUROR BUT WILL BE RESPONSIBLE FOR SIGNING ALL COMMUNICATIONS TO THE COURT AND FOR HANDING THEM TO THE MARSHAL DURING DELIBERATIONS. YOU SHOULD ELECT ONE PERSON TO ACT AS FOREPERSON AT THE OUTSET OF YOUR DELIBERATIONS. I SOMETIMES SUGGEST THAT IT IS EASIER TO ELECT JUROR NO.

1 – THAT IS, MS. YOUNG, BUT SOMETIMES JUROR 1 DOESN'T WANT TO ACT AS FOREPERSON, SO YOU ALL CAN ELECT WHOMEVER YOU WANT. THAT IS YOUR PREROGATIVE. THE MANNER IN WHICH THE JURY CONDUCTS ITS DELIBERATIONS, OF COURSE, IS COMPLETELY WITHIN YOUR DISCRETION. YOU MAY FOLLOW ANY PROCEDURE THAT YOU CHOOSE, PROVIDED THAT EACH JUROR IS PRESENTED WITH AMPLE OPPORTUNITY TO EXPRESS HIS OR HER VIEW. THAT WAY WHEN YOU DO REACH A VERDICT YOU WILL KNOW THAT IT IS A JUST ONE, MADE WITH THE FULL PARTICIPATION OF ALL THE JURORS AND THAT YOU HAVE FAITHFULLY DISCHARGED YOUR OATH. I REMIND YOU ONCE AGAIN THAT YOUR DUTY IS TO ACT WITHOUT FEAR OR FAVOR AND THAT YOU MUST DECIDE THE ISSUES ON TRIAL BASED SOLELY ON THE EVIDENCE AND MY INSTRUCTIONS ON THE LAW.

THANK YOU.

NOW I WILL HAVE TO ASK YOU TO REMAIN SEATED WHILE I CONFER WITH COUNSEL TO SEE IF I MISSED PART OF THE CHARGE.

[SWEAR THE MARSHAL.]

[JURY RETIRES]

	8AKMKARS	Sentence	·
1	UNITED STATES DISTRICT OF NEW		
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3	UNITED STATES OF AMERICA	Α,	
4	V.		07 Cr. 541 (RPP)
5	DANIEL B. KARRON,	•	
6	Defendan	t.	•
7		X	
8			New York, N.Y.
9			October 20, 2008 2:30 p.m.
10	Defense		
11	Before:		ONI TD
12	HON. RC	BERT P. PATTERS	
13			District Judge
14	•	APPEARANCES	
15	MICHAEL J. GARCIA	mar for the	
16	United States Atto		
17	STEVE KWOK CHRISTIAN EVERDELL	tatos Attornors	
18	Assistant United S	cates Actorneys	
19	RUBINSTEIN & COROZZO Attorneys for Defe	ndant	
20	BY: RONALD RUBINSTEIN		
21			
22	AT GO DODGODIO MEDICALIA	2 (H.2.).T.	
23	ALSO PRESENT: KIRK YAM RACHEL O	· ·	
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		DIGERLA DEDOS	

1 (Case called) MR. KWOK: Good afternoon, your Honor, Steve Kwok for 2 3 the government. With me at counsel table is Chris Everdell. THE COURT: Good afternoon, Mr. Kwok and Mr. Everdell. 4 5 MR. RUBINSTEIN: Good afternoon, your Honor, Ron 6 Rubinstein for the defendant. I have to apologize. I thought 7 it was 2:30, the sentence. It must have been a senior moment. 8 THE COURT: I have a presentence report. The latest 9 one is dated October 7, 2008. Has the defendant seen the 10 presentence reports, including the latest one, October 7, 2008? 11 MR. RUBINSTEIN: Yes, your Honor. THE COURT: He has read them? 12 13 MR. RUBINSTEIN: Yes, your Honor. THE COURT: Are there any changes to be made? 14 MR. RUBINSTEIN: No. Except for the objections we 15 16 have --THE COURT: Except for the objections that you have in 17 your letter of October 13 and also in a letter received Friday, 18 19 October 17, 2008, those two letters to the Court? 20 MR. RUBINSTEIN: That's correct, your Honor. THE COURT: The government sent us a letter dated 21 22 October 17 also. I have not received any response by the 23 government to your letter of October 17. MR. KWOK: The government did not submit a response to 24 25 the latest letter.

THE COURT: You're willing to proceed on that basis?

MR. KWOK: The government is ready to proceed.

THE COURT: Then I guess the best way -- I don't know how the parties think the best way to proceed, but it would appear to me that the best way to proceed is by considering Mr. Rubinstein's letter of October 17, which disputes the computation of loss contained in the presentence report and in the government's letter.

I might say that I've had some concerns about the loss computation. It's not clear to me that a failure to get approval of expenditures from the grant officer amounts to the same as an intentional misapplication of funds. And to the extent that we have here in this case, as I understand it, the final budget as approved in December 2001, and subsequent to the applications to amend the budget were not approved. So the requisite documents that the Court has to examine of the budget contained in — is it Exhibit 12?

MR. KWOK: Your Honor, I think the last approved budget is the budget attached to Government Exhibit 22. It's the third page --

THE COURT: It's Exhibit 12. Just a second. Exhibit 12 is the original budget that Dr. Karron signed. Then there is Exhibit 20. 21 was just an administrative contact change. Exhibit 22 contains the final budget approved -- amended budget approved by the agency.

So I have difficulties. For instance, looking at Exhibit 20 and 22 and the fringe benefits being allowed at 34 percent of salary, as I see it in the documents. I have difficulty also with the tabulation contained in Government Exhibit 114 and 115 because they are just rough calculations, as I see it. I don't know who compiled them, but I gather it was Ms. Riley, but we never went into the detail about, for instance, the statement in the tabulation that Dr. Karron's salary budgeted at 175, various cash. He spent 200,486, according to that tabulation. Those amounts, as I saw them, err were salary. They involved loans made which someone, I don't know whom, I presume Ms. Riley, determined the equivalent of salary.

As I alluded to earlier, the fringe benefits figure in this tabulation -- I'm looking at 114 -- says that Dr. Karron didn't spend \$40,337 in fringe benefits, and yet in the same tabulation it says that the fringe benefits were not allowed and spent \$4,081. That whole scenario of fringe benefits is somewhat illusive to me.

The testimony, as I recollect it, was CASI, the corporation, did not have a formal benefit plan and they were endeavoring to compile one during the time of the grant. And instead what Dr. Karron did was to pay benefits just as he was accustomed to paying them, for whatever medical expenses the various employees had for their wives. I have some difficulty

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1	in, 1, finding that there was criminal intent with respect to
2	these expenditures, which are all on Government 114, and with
3	the manner in which those overexpenditures were computed. It
4	seems to me this is just a rough calculation and not something
5	that a Court could rely on in a criminal case. I'll hear from
6	you. That's my assessment of that proof.
7	MR. EVERDELL: Your Honor, I think; in fact, I know
8	114 and 115 are based on Ms. Riley's underlying analysis.
9	THE COURT: The spreadsheets.
LO	MR. EVERDELL: Yes, the spreadsheets.
L1	THE COURT: But it doesn't meet it because in her
12	spreadsheet she doesn't have any payment like \$248,000 worth of
L3	salary in year one.
L4	MR. KWOK: Your Honor, she does. That number is the
L5	net transfers.
L6	THE COURT: I've looked at salary, I think.
L7	MR. KWOK: Including the tax withholding, I believe is
L8	the testimony that she testified to. When you take into
L9	account all the money that Dr. Karron took out from CASI, minus
20	the amount that he paid back
21	THE COURT: That isn't salary. We are talking about
22	salary. I don't see salary. There is nothing like salary in
23	those documents that equals 248 \$200,488.
24	MR. KWOK: Salary is just a heading. What she meant
25	by this is money that defendant took, pure money, not in terms

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1	of expenditure; cash that he took from CASI, whether in the		
2	form of quote unquote loan or whether in terms		
3	THE COURT: Show me. She has no tabulation putting		
4	114 into context with her 110, Exhibit 110.		
.5	MR. KWOK: If your Honor could look at Government		
6	Exhibit 110.		
7	THE COURT: I did look at Exhibit 110.		
8	MR. KWOK: Page 38.		
9	THE COURT: I have it here. I don't know that I have		
10	it here.		
11	MR. KWOK: Page 38 of 44.		
12	THE COURT: I guess we will have to get 110, because I		
13	don't think I have it here, but I'm fully familiar with it. I		
14	think it's in Mr. Rubinstein's submission, as a matter of fact.		
15	MR. KWOK: That page shows money going to the		
16	defendant and money coming from the defendant. So taking		
17	THE COURT: What page are you referring to? Maybe		
18	it's in Mr. Rubinstein		
19	MR. KWOK: 38 of 44.		
20	THE COURT: He has payroll. Looking at 13 of 44?		
21	MR. KWOK: Page 38 of 44.		
22	THE COURT: That's loan and loan repay. That's not		
23	salary.		
24	MR. KWOK: If you look at the memo line, it is salary.		
25	Look at, for example, the third check, per check register,		

salary advance.

THE COURT: That one she treated as a loan.

MR. KWOK: These are expressed in a spreadsheet as loans, but they are all money going to the defendant.

THE COURT: I understand. It's just not salary.

MR. KWOK: You can give it whatever label you like, but the bottom line is, the defendant took from the company this much money which added to 188.

THE COURT: I don't doubt that's what your calculations are.

MR. KWOK: If I can just correct a misimpression,

Government Exhibit 114 is not a rough calculation. It's not a

guess. It's based entirely on Government Exhibit 110 which, in

turn, is based entirely on the bank records that she reviewed.

THE COURT: They are certainly not in those records, a showing of \$200,488 in salary.

MR. KWOK: If I can explain how she got that number.

THE COURT: It's denominated salary. It's a table saying salary. I don't care how she got the number.

MR. KWOK: But that doesn't really affect the loss amount. You can label it and give it whatever label you want. But at the end of the day -- let me back up one step. The grant says Dr. Karron can take from the grant for his own use, whether we call it salary or compensation for efforts that he put into the grant, \$175,000. That's the amount -- the portion

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of the pie that he can get from the grant, \$175,000.

THE COURT: He can get a salary of 175,000 is what it says in the budget, plus 34 percent for fringe benefits.

MR. KWOK: If he took from the grant money in addition to \$175,000, putting aside fringe benefit for a second, any amount above that is a disallowed amount, whether you call it excess salary or call it a loan that never gets paid back. It doesn't really matter. At the end of the day, the budget says \$175,000 and no more. If you take more than that, the first dollar above \$175,000 is disallowed. Whether you call that excess salary or loan, it doesn't really matter.

THE COURT: I'm not dealing with ifs. I'm dealing with what the record shows. This doesn't show what the records show as far as salary goes.

MR. KWOK: It shows that, just for simplicity, she doesn't want to create that many different categories. Salary, loan.

THE COURT: She has got a salary category. She shows it. Go on a couple of pages. Payroll, next page, \$35,293.58.

MR. EVERDELL: Your Honor, also, to bear in mind with this, these entries on the spreadsheet are based on how Dr. Karron himself characterized things in the documents. So we have checks here for pay periods that are quote unquote payroll checks for salary. However, he called other things loans or other things like that.

Now, Lynn Riley, in doing this analysis, put those together in the same category because as Mr. Kwok was saying, it was money paid from CASI to Dr. Karron. If he is allowed a payroll, a salary of \$175,000, it doesn't necessarily matter how the defendant himself characterizes those payments to himself. Whether he calls them payroll checks or whether he calls them loans, it's still a payment to him personally from CASI funds. So her object, I think in doing it this way, was to sweep together those things which were direct payments from the company to Dr. Karron.

THE COURT: I don't dispute that. But the tabulation is not something that I can go along with. It is not salary.

MR. KWOK: We have no problem with that. If you want to call it salary/loans or just simply money to Karron, excess money to Karron, it doesn't really affect the loss amount because at the end of the day the loss amount is simply arithmetic, what he took from CASI minus what he is supposed to get under the grant, which is \$175,000. We have no problem, if it makes things clearer, instead of calling that salary, we could call that, simply, excess money to Dr. Karron.

THE COURT: You see what he did was -- I think it is borne out by the defendant's papers to some degree -- is he took a very low salary to pay back the loans. Is that a fair statement?

MR. EVERDELL: Your Honor, that fact that you just

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said, the fact that he didn't take his full salary, is taken into account --

THE COURT: I didn't say that. I want to know whether you're disputing what I just said.

MR. EVERDELL: What I agree with is that, yes, the defendant did not take his full salary in the sense that when you look at salary in checks, they are less than the \$175,000 of quote unquote salary.

THE COURT: You saw there was less withholding, right?

MR. EVERDELL: But he paid himself in other ways in things he do did not characterizing as salary.

THE COURT: Was there less withholding or not? You better confer.

MR. EVERDELL: Your Honor, apparently what happened was, he wasn't characterizing anything -- there was no withholding until an accountant came in towards the end of year one and said, you have to call these things payroll, you have to take your salary and then you have to calculate withholding. And that account went back retroactively and looked at these payments and did the withholding retroactively with all these payments to him which had not been characterized.

THE COURT: There are documents appended to the defendant's papers which indicate that the withholding was taken timely. That's not borne out by what you say, showing Mr. Rubinstein's letter of Friday. Where did I put it? He has

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got documents showing money being withheld to calculate salary.

MR. KWOK: Which page are you looking at, your Honor.

THE COURT: I'm trying to find the letter now.

Attached to it, if you look, it's about ten pages in. It shows the salary, August 2, 2002, salary. It shows outstanding salary of \$61,918; federal withholding tax, minus 17,104; social security deduction, 2,091; Medicare and employee 462.81.

New York withholding, New York City resident also. It's all in there. He also has one for the pay period 7/01/2002. Maybe that's the same.

MR. KWOK: Are you looking at this page?

THE COURT: Yes, I believe so. It has a check at the

MR. EVERDELL: Your Honor, I think this may actually reflect what we are talking about. If you look at check No. 10401. Is that the page you're looking at?

THE COURT: Yes.

MR. EVERDELL: That looks like it was paid out on August 2, 2002, which is towards the end of year one of the grant. If you look at the spreadsheet that Ms. Riley created, it shows that the first actual paid check that he got was in May of 2002; again, sort of towards the end of year one of the grant. This is, as we are getting towards the end of year one, where Dr. Karron is being told that needs to pull out withholding. I don't think this contradicts what we were

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saying before.

It does contradict what was said. you said is not consistent with what you're saying now. the trouble with these analyses. They are fine as far as they go, but they do not tell the story.

Anyway, there are, similarly, prescriptions, first item in Mr. Rubinstein's letter. I don't think that the item is prescriptions. I think the item is other and it included other matters such as bank processing, consultants, lawyers, and bookkeeping.

MR. EVERDELL: Your Honor, if I can just step back for one second and just talk about the general position of the government on loss, which is that unless it's specifically budgeted for -- that it has been preapproved in a budget or has had subsequent approval authority from NIST, or whatever expenditure it may be, that it's overbudget or an item in a category that is not a budgeted category, that constitutes a loss to the government. The reason why is --

THE COURT: It has to be -- it seems to me it has to be a loss as to which there was criminal intent.

MR. EVERDELL: Your Honor, I think --

THE COURT: In order for there to be an intentional misapplication of funds. You have to have criminal intent here. The fact that the government lost money on the grant or the money wasn't expended properly does not necessarily mean

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expenditures.

MR. EVERDELL: Your Honor, according to the

that there was criminal intent involved in all those

guidelines, the guidelines commentary, when you're looking at government benefits, you are supposed to look at what the intended use for the money was. For loss amount you look at whatever was diverted to in unintended use. It's the government's position that with this money that was given out, it came with a lot of very specific spending rules and those rules were clear and set forth. So that is the intended use of the money.

We handled this money such that you would spend it in accordance with these rules and that included the budgetary rules, the prior approval rules, all of the other spending rules that came attached to the grant. So that when money is diverted elsewhere, when it is not part of an approved category or overbudgeted category, that's not an intended use of the money. That is not an intended use of the money because, otherwise, why not just give away the grant money with no rules and say, okay, here is a block of money for you to use as you see fit. We won't ask you how you're spending it. Come back in a year or so and tell us the progress you've made on your grant. I'm sure there are grants that probably do operate that way, but that's not this one. This one wanted to keep a very close leash on how this money was spent, they wanted to approve

everything that was spent and see all of the expenditures beforehand so that they were on board.

THE COURT: All the expenditures that were budgeted.

MR. EVERDELL: They wanted to see a budget first, yes, and anything that was not in that budget or over that budget, with the exception of the 10 percent rule that we are all familiar with, had to be approved. The reason why they do that is because, as defense counsel said many times in his own submissions, this is a type of grant where the government is actually very involved. So they want to keep a tight leash on how this money is spent.

money is supposed to be spent, that is the intended use of the money, to be spent according to budgeted items or items that have been preapproved by NIST. So it's the government's position that when you go outside of those categories or go over budget on one of the approved categories, that still constitutes a loss to the government because they have not been able to exercise the control that they meant to exercise with instituting these grant rules and these spending rules.

THE COURT: Look. Let's go right to an item that bothers me, fringe benefits. They were approved at 34 percent of salary. No one said what constitutes a valid, as far as I could find in the papers in the court, what was a valid fringe benefit and what wasn't. How can I have any confidence that

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not approved fringe benefits of \$4,000 is something that is a willful disregard of the rules?

MR. EVERDELL: Your Honor, there are a couple of things with fringe benefits which is, I believe, how this was calculated. We heard testimony that there was no plan in place.

THE COURT: I heard that, but there was no plan in place from the beginning. You only found that out at a certain point. No one went and checked the group out or anything in advance. It says fringe benefits. The testimony is, he had a cafeteria plan or whatever it was.

MR. KWOK: Your Honor, if I may, I think the testimony --

THE COURT: And anything and everything could be expended in the way of fringe benefits to himself and members of the family and for the employees. The government may come back with, oh, it wasn't in the plan, so, therefore, it shouldn't be allowed, but there is no warning to the person there. I can't see the criminal intent there.

MR. KWOK: The defendant was certainly told repeatedly --

THE COURT: The government may have lost the money, but I can't see any criminal intent.

MR. KWOK: The intent is when he asked a question and was told no and went ahead and did it anyway. It was in the

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He didn't ask any question about medical THE COURT: benefits, as far as I know, from the record.

MR. KWOK: If I could just address your Honor's question about amount. The amount reflected on this chart is simply the amount over budget because he took more salary because fringe benefits is a percentage of salary. So it's calculated as a fixed percentage of salary. So because he took more from CASI than the amount that he was allowed, namely, \$175,000, the amount we just allowed him is an amount of \$4,000 or so. It is simply an amount over budget because he took more in dollars --

THE COURT: He underspent budget through those fringe benefits by \$4,000 it says right above it. Look at that. is a mess.

MR. EVERDELL: Your Honor, I think we can make this much simpler. Let me see if I can do this. Even if you look at just the categories that were nonbudgeted categories, we are not talking about fringe benefits anymore, we are not talking about even equipment overexpenditures, we are not talking anything that was actually a budgeted category that had been at least somewhere approved by NIST before.

If we are talking about everything else, that is, rent, utilities, cleaning, meals, capital improvements, or these other expenses which were actually not listed in the

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1	category other under the budget, we are already talking about
2	for years one and two of the grant, we are already talking
3	about a loss amount, under my calculation, is over \$172,000. I
4	think
5	THE COURT: What figures did you use in the first year
6	of the budget to get 172,000?
7	MR. EVERDELL: I just added up in years one and years
8	two, so this would be 114 and 15.
9	THE COURT: Which items are you adding up?
10	MR. EVERDELL: I'm adding up rent, which is \$60,000 in
11	year one; I'm adding up utilities, which is 16,341 in year one.
12	I'm adding up capital improvements.
13	THE COURT: Rent. You're adding up after rent what?
14	MR. EVERDELL: Rent was first, 60,000.
15	THE COURT: Utilities.
16	MR. EVERDELL: Utilities was second.
17	THE COURT: There was some testimony on utilities. He
18	got an approval.
19	MR. EVERDELL: Your Honor, I don't think there was
20	ever testimony that he got a prior approval for utilities. In
21	fact, he was told repeatedly that utilities were not allowed.
22	THE COURT: The difference between the utilities for
23	the apartment before and after the upgrade for air conditioning
24	and for the machinery
25	MR. EVERDELL: I think the only testimony we had on

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the record is that he tried to get an approval for the utilities, but he never received one.

THE COURT: Mr. Rubinstein's quotes a utilities figure using Mr. Benedict's testimony at 1057. I can't find it. Here it is, 1057.

MR. EVERDELL: I'm looking at the page he cited. Here it just says -- his question is, this is Mr. Rubinstein's question, and he is questioning --

THE COURT: And the discussions were that if he could indicate the fact that there was an increase, that they could be classified as direct expenses, not indirect expenses.

MR. EVERDELL: It says the discussions were, right, that if he could demonstrate the fact that there was an increase, that they could be classified as direct expenses, not indirect expenses. But there was never any approval of this. So at this point none of the testimony here is talking about any approval of any additional utilities, expenses, or anything like that.

THE COURT: Sounds like approval, but not written approval.

MR. EVERDELL: He is talking to Bob Benedict. Bob
Benedict, I think, is a witness here who is the finance
manager. We are not talking to the people at NIST, who
actually made the approval, such as Hope Snowden. If I recall
correctly, Hope Snowden's testimony about utilities was simply

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1	that there were lots of conversations that she had with the
2	defendant himself and with others about whether or not grant
3	funds could be used for utilities, and she said no.
4	THE COURT: Where is this?
5	MR. EVERDELL: The cites to the record?
6	THE COURT: Yes.
7	MR. EVERDELL: Your Honor, I'm afraid I don't have
8 .	them
9	THE COURT: This does say the witness summarizes his
10	testimony at the end of the page. The incremental amount of
11	additional expense caused by the grant could be classified as
12	direct expense and not indirect expense. Direct expenses are
13	allowed, regardless of what they are. Indirect expenses are
14	not allowed.
15	MR. EVERDELL: I think that that quote just says right
16	there that they are talking about a possibility, but a
17	possibility that was never actually approved. And a
18	possibility that was never actually budgeted. So
19	THE COURT: It suggests not approved in writing. I
20	have seen that. I agree with that. But it sounds as if it was
21	approved orally.
22	MR. EVERDELL: I don't know if I read that as that.
23	Maybe it's Mr. Benedict's understanding of what he could
24	possibly get approved under the rules.
25	THE COURT: I think that's a little bit the point

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1	is that the criminal intent of the defendant is important here.
2	And if he was proceeding on that basis, that seems to me I
3	have reason to it seems to me that that amount is an amount
4	that should not be considered in the loss calculation.
5	MR. EVERDELL: Your Honor, I think I have to
6	respectfully disagree with that. My colleague, Mr. Kwok, has
7	pointed me to the part in the record. This is Hope Snowden's
8	testimony on page 256 of the record where she is talking about
9	her conversations with I believe it's Dr. Karron and
LO	Mr. Gurfein about expenses. And the question was:
L1	What questions did he ask you, if any, during those
L2	conversations?
L3	And the answer is: Was he allowed to pay for rent and
L4	utilities with the ATP federal-funded grant.
L5	"Q. And rent for what, rent utilities for what?
L6	"A. For the condo in which at this point, I guess, CASI, the
L7	company, was being housed.
L8	"Q. And whose condo was that?
L9	"A. Dr. Karron's condo.
20	"Q. What was your response to the question? Can rent and
21	utilities be paid for with ATP funds?
22	"A. No. They are unallowable costs."
23	THE COURT: I understood that testimony. That comes
24	well preceding Benedict's testimony, it comes well preceding
25	the work for the apartment for the air conditioning, and that's

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1	what caused the utilities to go up and that's after the time
2	that Snowden is talking about, as far as I can see.
3	MR EVERDELL: Let's just do this then, your Honor.
4	THE COURT: I've got to be
5	MR. EVERDELL: Let's do this. Let's set aside for the
. 6	moment the issue of whether that \$4,595 should or should not be
7	included in the loss amount.
8	THE COURT: According to Mr. Rubinstein, it's not
9	4,000.
10	MR. EVERDELL: I was looking at page 2 of his letter.
11	THE COURT: 16,341, as I understand it. The utilities
12	prior were 4595, prior to the project.
13	MR. EVERDELL: I believe that's 16,341 is what the
14	government is claiming is the utilities amount for year one.
15	THE COURT: Maybe you're right. That's the
16	government's claim, not 16,000. He claims
17	MR. EVERDELL: He claims that the loss is only 4,595,
18	which is the amount of the increase, he says.
19	THE COURT: That's the prior amount of utilities, not
20	the increase. The difference should be not a loss.
21	MR. EVERDELL: I apologize, your Honor. He's claiming
22	the difference between the two should be not included in the
23	loss.
24	But setting that aside for the moment, again, if you
25	add up the categories again that were nonbudgeted expenses,

even leaving that issue aside, I guess let's just say that that is almost \$12,000, not quite, of difference.

If you go to the next category, which is capital improvement, in year one is 11,248. Again, this has no -there is nowhere in the budget where this stuff is talked about. There is no prior approval from NIST for this sort of thing. Mr. Benedict is using the money, same which he does for cleaning and meals, to do whatever he feels like he wants to do with it, and he's spending it on outside budget categories.

THE COURT: Let's deal with capital improvements.

They claim that this should be more profited by the site preparation.

MR. EVERDELL: But even site preparation isn't a budgeted category.

THE COURT: I don't know that it is.

MR. EVERDELL: It's not, according to the exhibits.

Basically, what the defense counsel has tried to do in this submission is take every possible expenditure that he can think and try to claim that if it had some tangential or arguable benefit to the research, then it can't be qualified as a loss. That simply can't be workable, your Honor, because almost every single expenditure has some benefit to the research. You just can't work that standard. It's unworkable.

So what we decided and what our loss calculation and theory is about is whether or not it's in budget because that

is clearly what the intended use of the money was. We give you this money so that you can spend it according to the rules, and they were very clear about that. There was lots of testimony about how the rules were supposed to be followed, how they explained the rules to them, how they had to adhere to their budget, and for good reason, and how they needed approvals for things that were outside of the budget.

So while I understand that certain things that the defendant is claiming may arguably have benefited the research in some way, that's simply not the standard we can work with, because then there would be no loss at all, it would seem like. Even meals. People have to eat in order to conduct research, but you can't spend federal grant money to do it. Yes, you need to clean things in order to have your house cleaned, but you can't spend federal grant money to do it. It has to be budgeted if you're going to do it that way.

Things like site improvement, capital improvement, whatever it is, things that may sound even arguably better than meals and cleaning in terms of how it might affect the research, it doesn't count because it's not budgeted. There is a good reason for that. The government needed to understand and approve all the expenditures related to the research, whether it was because it was in a budget or because someone came to them later and asked for approval for something that was outside of the budget.

there is this 10 percent rule that they have got in there.

Let's not quite put it that way because

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MR. EVERDELL: Yes, your Honor. If you look at 114 and 115, down at the bottom right-hand corner you see the pie chart at the bottom right-hand corner which has -- I don't know

if you can see it.

THE COURT:

THE COURT: I can see the pie chart.

The slice is the 10 percent. MR. EVERDELL: If you're inclined -- it's our argument that the 10 percent rule, the money still has to go from somewhere. Even if you are going to exclude the 10 percent from the calculation, it's still going to rise far above the level that I think your Honor is considering.

Not only that, 10 percent can't be used for new categories. I'm talking simply now about categories that are not in the budget. The 10 percent rule only applies to categories that are already in the budget, and you may reallocate funds within those preapproved categories.

So with respect to the money I'm talking to you about now, the ones that are not budgeted categories at all, the 10 percent rule does not even apply to that. So even if you add it up, all these out-of-budget, nonbudgeted categories, you would still get to a loss amount, under my calculation, over \$172,000 in loss.

If your Honor subtracted the 12,000 or so from the

utilities, we are still over the 120,000 threshold and guidelines which makes it -- I believe, it's a level -- I want to check -- it bumps it down two levels from the calculation that's in the PSR. But it's still a total offense level of 18 as opposed to 20, using that calculation.

THE COURT: The PSR originally was more than 200,000.

MR. EVERDELL: Your Honor, we still think that the calculation in 114 and 115 is entirely correct. We actually think that is the loss that the government suffered. In fact, we are giving the defendant quite a bit of the benefit of the doubt because we are saying that everything within the budgeted category was a proper expense. It makes that assumption. And everything — all we are saying is everything outside of that, either if it's a nonbudgeted category or something overspended on a budgeted category, represents a loss to the government.

However, if your Honor is not inclined to accept that, because of concerns you have about the calculations here, at the very least, if you look simply at the nonbudgeted categories, things that were not approved by NIST at all, which are those things that I mentioned before -- rent, utilities, capital improvement, cleaning, meals, and other -- then we have a loss amount that is at a minimum just two levels less than what's in the PSR.

THE COURT: You would agree that it should not be entitled to subscriptions as other expenses.

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1	MR. EVERDELL: I apologize, your Honor. I
2	miscalculated. It's not two levels less. It's actually four
3	levels less. If you start with a base offense of 6 and the
4	loss amount is more than 120,000, that adds 10 and you get 16.
5	MR. RUBINSTEIN: Your Honor, I think that the initial
6	distinction is a question of what is allowable and what is
7	allowable. And I think
8	THE COURT: What is what?
9	MR. RUBINSTEIN: Allowable; in other words
10	THE COURT: I know what allowable is.
11	MR. RUBINSTEIN: As opposed to what the budget says
12	that was allowed. I say to your Honor that this money was not
13	given to buy equipment, just to buy equipment, to get
14	subcontractors, to have employees. This money was given for
15	research. That was the purpose of the money.
16	I think that the government is using the budget in a
17	way that it never was intended for the purposes of what a loss
18	should be. Let's assume that Dr. Karron's spent the whole
19	\$800,000 on machinery. He wasn't budgeted for it, but he spent
20	\$800,000 for machinery for the project. He didn't take a
21	salary, he didn't spend money on anything else and, lo and
22	behold, the project ran the three years and he developed the
23	science that the money was given for. Under that theory he
24	could be prosecuted for \$690,000 in misspent money.
25	The bottom line is, your Honor, the fact that they

1	come up with a category and then they say, we have a category
2	here, capital improvements, the testimony is clear,
3	uncontroverted, that these weren't capital improvements. They
4	were site preparation and they devalued the apartment we had
5	an expert a one bedroom apartment in Kips Bay selling for
6	just over \$500,000. Everyone who knows anything about the real
7	estate market in New York City. That figure was devalued
8	because it devalued, but they have a category. It's called
9	capital improvements and we don't have a category in the
10	budget. Therefore, not only whatever you spent, no matter what
11	else you want to call it, we called it capital improvements.
12	Did anybody call it capital improvements but the government?
13	Now they say, it's capital improvement, not in the budget,
14	therefore disallowed. I submit to your Honor, this is site
15	preparation. Any reasonable, logical person would conclude
16	THE COURT: The trouble is, in his application for the
17	grant he said he gave the impression that they were up and
18	running.
19	MR. RUBINSTEIN: They had equipment there.
20	THE COURT: As I understood it, active Web site, et
21	cetera.
22	MR. RUBINSTEIN: They had a Web site.
23	THE COURT: And they had computer equipment.
24	MR. RUBINSTEIN: But they didn't have this kind of
25	computer equipment, Judge. We are going back

1	THE COURT: You don't need site improvement.
2	MR. RUBINSTEIN: They needed it here. The contractor
3	testified what he did. He built things, he put up rackings for
4	them to convert the living room into a computer lab.
5	THE COURT: The material was everything was in
6	there. What he did was, as I understood it, was to improve the
7	usability of the space.
8	MR. RUBINSTEIN: Not for an apartment.
9	THE COURT: Not something that was called for in the
LO	budget.
L1	MR. RUBINSTEIN: It's not called for in the budget, I
L2	agree with you. It may come under the categories of others.
L3	It may come in here. But the question is
L4	THE COURT: Others is for audits. Other was the only
L5	thing the budget under other was audits, is my recollection.
L6	MR. RUBINSTEIN: There was a budgeted category called
L7	audits, your Honor.
L8	THE COURT: The only thing that was budgeted under
L9	others was audits, \$10,000.
20	MR. RUBINSTEIN: If you look at 115, you'll see that
21	in 115, next year, they disallowed the \$10,000.
22	The bottom line is that the items that the prosecutors
23	talked about, capital improvements, I submit, were not capital
24	improvements. The meals, they have no breakdown of where the
) 5	mode wore who the medic were for If you recall Riley's

testimony, she went to lunch with Dr. Karron to talk about this investigation with other people from CASI, and she disallowed that lunch. Any business is going to charge a lunch like that. Dr. Karron spent on his Master Card -- he had three credit cards. The only card that he charged meals on that were deducted were on the American Express CASI card. His own card and the Master Card is in evidence. He never deducted.

To suggest that there is not a category of meals, there is travel. There is travel -- does travel include meals when you travel? That's why when we broke down, your Honor, the subscription, we told you what those were. They had nothing to do -- you sort of have the category, you were thinking of some magazines like Sports Illustrated. This is for research for access to research for the projects. So you subscribe to a service to get your scientific data.

THE COURT: The big item that Mr. Everdell was saying, just, look, take the ones that aren't within the budget, the nonbudgeted items, and add them up and giving you credit for the utilities amount, so you have an \$11,000 credit, as I understand it. You still have 11,000 under utilities or maybe 12, 12,000.

MR. RUBINSTEIN: It would be almost 5,000 under utilities --

THE COURT: You save that, so to the extent, instead it would be 5,000. What about the other entry, the rent entry?

1	MR. RUBINSTEIN: Clearly, he was not entitled to the
2	rent, your Honor, so that's \$60,000.
3	THE COURT: Then you add the other two then
4	MR. RUBINSTEIN: What do you add two with, Judge?
5	THE COURT: \$43,000 spent.
6	MR. RUBINSTEIN: For subscriptions?
7	THE COURT: No. For bookkeeping, auto expense, blank
8	processing, consultants, lawyers, dues, prescriptions.
9	MR. RUBINSTEIN: That he's allowed. Subcontractors.
10	MR. EVERDELL: Your Honor, I think that the defense
l1	counsel is saying it's allowed simply because it is listed
12	under the category other, but, as your Honor pointed out, in
13	the budget, the only thing that the company listed for its
14	other expenses was the audit.
15	THE COURT: You got this 80,000 figure that you can
16	move around. But that seems to me is already taken care of
17	when you look at the overdrawn equipment and the overdrawn
18	materials and supplies. That takes care of the 80,000 pretty
19	well.
20	MR. RUBINSTEIN: But those were budgeted items, your
21	Honor, that went back to the intent theory. If they were
22	budgeted items and he had no criminal intent he intended to
23	misappropriate. We concede that. He spent over the budget.
24	But did he criminally intend to misappropriate that amount?
25	THE COURT: He didn't spend much over the total amount

because he took out the 836,5 plus \$1300, apparently, the first year. It's these expenditures in the other category that --

MR. RUBINSTEIN: If you have 60,000 for the rent, you have 11,000 for the -- you have 5,000 for the utilities.

That's 65,000 in the first year for the utilities. I submit that the capital improvements are not -- are a legitimate expense. The cleaning is questionable. Even though I think that it's arguable on defendant's side, I won't contest the cleaning.

THE COURT: It's an appropriate expense. He should have gotten approval for it.

MR. RUBINSTEIN: That is the point. The point is, if he didn't get approval, we know that the rent -- he was turned down and he still took the rent. We know that that is an amount that he took that he wasn't entitled to.

But as to other items that were for the benefit of the research, it doesn't seem that the guidelines, when you look at the loss factors and how to consider loss and you consider government benefits, I think even though they don't have the specific illustration, the government can't cite one grant case where there was a misappropriation.

The problem here is that, what was the government's benefit? They gave money for a research project. It's unquestionable that's all they did was research. The only monies he put in his pocket were the rent monies.

THE COURT: The problem is that CASI, he did own CASI, as I understood it, he and his family, I guess. You can misapply money not just for your benefit, but you can misapply money for the corporation's benefit.

MR. RUBINSTEIN: Right.

THE COURT: The trouble with capital improvements, yes, it probably was not to his personal benefit because the apartment probably was worth more unimproved than it was containing those improvements, but it would be beneficial to CASI as a computer center, research computer center, to have the improvements made. That's the problem. That would still not be the research contemplated by the grant.

MR. RUBINSTEIN: I still don't see where they get their figure that they are claiming --

THE COURT: I don't see the capital improvements. I didn't realize the amount was \$37,000.

MR. RUBINSTEIN: When the apartment was sold they had to rip out all that stuff for the new owner.

THE COURT: That's what I was referring to earlier.

What kind of a figure do you come up with, Mr. Rubinstein?

21 || Mr. Rubinstein?

MR. RUBINSTEIN: In the first year, 60,000 for rent, 5,000 for utilities. I'm rounding off. 2,000 for meals and 67,000 in the first year. Questionable capital improvements or site preparation, which would probably go under equipment. And

the --

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MR. KWOK: Can we have the amount on that?

MR. RUBINSTEIN: For capital improvements?

MR. EVERDELL: The thing you just cited.

MR. RUBINSTEIN: I said 2,000 for meals, 5,000 for utilities, 60,000 for rent. Second year, there is 2,000 for rent, 5,000 for utilities. Meals, the second year, rounded off to \$1500. I'm sorry. Meals. \$3,000. That would make it \$77,000 without capital improvements. If you gave the whole capital improvements, which I don't see how you can do that for the two years, you're talking about 20. We don't concede this. We are talking about 31,000 over there.

So in a worst-case scenario it would be 108,000, but I submit to your Honor that I don't see why capital improvements should be considered as a nonbudgeted item when it clearly was used in order to facilitate -- you couldn't put those big computers in that apartment without site preparation. You wouldn't do it without having the shades to keep the heat out, without having extra wiring to get the electricity needed for the place. These are things that are totally unrelated to what anybody would consider a capital improvement.

THE COURT: Part of the problem here is that the site was changed from NYU to apartment. With NYU you had free space and a place for the computers. When that fell down, he switched to the apartment. But the budget doesn't change in a

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material way, I believe, between the two budgets. I think it should have.

MR. RUBINSTEIN: Judge, I just feel that looking at Judge Rakoff's decision in Adelstein -- Adelson, rather, and in other decisions that I've seen, including Judge Block's decision out of the Eastern District --

THE COURT: It's not in your memo.

MR. RUBINSTEIN: I know. Because I'll give you the citations, your Honor. Judge Rakoff is 441 F.Supp.2d 506. Judge Block's decision citing Judge Rakoff's decision is a Westlaw citation of 354151 and a -- and they talk about -- those cases were primarily stock cases. They talk about that the fraud guidelines -- because the numbers increase so much that they give a distorted view of what a reasonable sentence should be.

In both of those cases -- I'm not even up to that point because first we have to have a guideline analysis before we get to the questions of downward departure or 3553 considerations. I think what the Court is trying to decide now in its analysis is, first, doing what the guideline calculation is required to do, before you determine whether or not you want to give a guidelines sentence or a nonguidelines sentence. I think that for the purposes of a guideline analysis, I think that a figure of between 70,000 and 120,000 for guideline purposes, analysis purpose, that that would be an appropriate

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range, 70,000 to 120,000 without --

MR. KWOK: Your Honor, if I may, even taking just the items Mr. Rubinstein talked about, the rent, utilities, meals. Utilities, by the way, just the difference, not the whole thing, we are up to \$100,000 already. And then if you look at Government Exhibit 115, year two, the category under other, which includes all manners of things like bookkeeping, auto expense, bank processing, consultants, lawyers, dues, subscriptions, that alone is \$31,000. If you add that category alone to all the stuff that Mr. Rubinstein just conceded, we are already over \$120,000, which puts us at level 16.

MR. RUBINSTEIN: I didn't concede that. There is no breakdown of what they are talking about. They give you bookkeeping auto expenses, which I assume relate to travel, bank processing consultants is budgeted for 250,000 -- rather, he is budgeted for \$110,000 in subcontractors, which I guess are consultants. He spends only 6,000 of that, and they throw in consultants, dues, subscriptions into a category. Then they want to say, that's \$31,000. I submit to your Honor, that nobody from that chart or from the 110 backup could say how they ever arrived at this number. Then they want to arbitrarily plug it in and say, no, look at that, we have arrived at the next level.

THE COURT: I'm looking where those figures must have come from. I think if you look at 110, 111, we can probably

determine ---

MR. KWOK: For example, your Honor, you can look at Government Exhibit 110, page 17 of 37. That, for example, lists all the gas payments, all her expenses. That's where it came from. That's just one example.

THE COURT: Mr. Spring is bookkeeper. That's what Kim Jackson is for Sprint.

MR. KWOK: That's right.

THE COURT: The sole purpose, as I understood the testimony, and I may be wrong, for Mr. Spring to be employed was to get the books in order for the other. They had another bookkeeper, as I understood it, but I may be wrong, who could take entries for bookkeeping, but wasn't skilled enough for interpreting what should be in the company's expenses and what should be personal expenses, and what should be reasonable expenses. Is that correct?

MR. EVERDELL: Your Honor, I think Mr. Spring, in addition with helping with the audits, also stayed on to do additional bookkeeping work for the company even after the audit was over.

THE COURT: I thought it was all computerized.

MR. EVERDELL: I misspoke.

In addition to help preparing the books for the upcoming audit, he also conducted some regular bookkeeping activities for the company. Even so, you have \$10,000 budgeted

1	for the audit and you went over the
2	other, which includes the overage,
3	Springs expenses, but it also incl
4	expenses.
5	THE COURT: But you are a
6	the \$80,000 has been used up.
7	MR. EVERDELL: By equipme
8	categories, yes, your Honor.
9	It's the government's pos
10	that this money should be counted
11	and it's completely absent from the
12	submitted, and was money spent wit
13	Let's also not lose sight
14	clear from the budget rules or from
15	costs are not covered, and that wa
16	defendant at all the premeetings b
17	Yes, certain things re
18	lots of things being bought, lots
19	this stuff. But it doesn't mean t
20	funds to spend on that stuff. You
21	So these expenses I th
22	spreadsheet that Ms. Riley prepare
23	itemized out here, at least the ot
24	THE COURT: Is Peter Ross
25	consultant?

at \$10,000 by the amounts in includes some of the Frank udes some things like auto

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ition that at the very least as a loss. It's nonbudgeted e budgets that were h ATP grant money.

of the fact that it was very m the ATP rules that indirect s made very clear to the efore he started the grant.

search can't happen without of things being improved, all hat you can use ATP grant have to follow the rules.

ink, just looking at the d, you can see how they are her category.

an employee or was he a

1 MR. EVERDELL: Peter Ross, your Honor? I don't think 2 I know where you're looking, your Honor. I see. 3 Your Honor, I think that Dr. Karron chose to pay Peter Ross as a consultant. Even so, what we are talking about here, 5 that's a \$15 charge. THE COURT: What charge? 6 7 MR. EVERDELL: I thought you were talking about the 8 Peter Ross parking charge. 9 THE COURT: Yes. MR. EVERDELL: Reimbursement to Peter Ross is a \$43 10 11 charge. We are talking about very small numbers here. Under 12 13 the guidelines, as it says in the commentary, the Court need 14 only make a reasonable estimate of the loss. And I think when you consider all these categories that we are talking about and 15 the fact that it is backed up on the paper here, that we are in 16 17 the range, at least, of 120,000, given what Mr. Rubinstein has just told your Honor and the very small difference that seems -1819 to exist at this point. The categories that are nonbudgeted categories should 20 21 be counted, and that bumps us into the \$120,000 range without 22 much trouble at all. Given that your Honor doesn't have to 23 come to an exact dollar amount of loss, the minor 24 discrepancies, to the extent they even exist, shouldn't deter 25 your Honor from coming to that larger loss amount because I

think the clear, logical way to read the evidence is that there are lot of nonbudgeted categories and they are backed up by the spreadsheet analysis, and that these should be considered as loss to the government because they were not approved, as the defendant knew he needed.

THE COURT: Brings me back to the question --

MR. RUBINSTEIN: The problem is, Judge, when you go to the backup that they throw out there, 110, and you find that the bank charges are under \$336 --

THE COURT: What page are you on?

MR. RUBINSTEIN: We have a gas expense on page 17 of 37 of \$1,189.68. We then have --

THE COURT: I missed the page.

MR. RUBINSTEIN: Page 17 of 37. We know that Dr. Karron was traveling to Washington, D.C. and to New Jersey as part of his work on this research, but let's take the whole figure. Next they have -- let's assume she put in -- the parking, \$67, that's on 18 of 37. Then they have bank processing on 18 of 37 of \$336. If you add up lawyers they have on 21 of 37 \$1,173.75. And I submit that's questionable because I think those lawyers were patent lawyers related to securing intellectual property that they were allowed to do. Then it says dues and subscriptions under that. They have \$198.

I'm looking for the -- they have that bookkeeping

figure out. I don't think it is appropriate, but they have a bookkeeping -- I don't know who that included, but let's leave the bookkeeping out of it. We are talking about under \$3,000, in my quick math, of expenses. And then they tell you that the category calls for \$31,000, but their thing is 31 thousand 8 or 625, depending on your eyesight. How that's broken down, whether or not these are appropriate expenses, then they say, let's plug in this additional \$31,000. I submit to your Honor that would be inappropriate.

MR. EVERDELL: Your Honor, let me address -- for example, there is a specific issue with the lawyers. Pennie & Edmonds, patent attorneys, it was my understanding that this was incurred before the grant even started. And these charges for lawyers are specifically prohibited by the grant rules.

Was Mr. Karron told this? No. Because he never actually tried to budget it as an item. Had he tried to budget it, he would have been told specifically that he couldn't use grant money to do this.

Again, we are faced with this argument that if it arguably somehow benefits the research, it should not be covered at the loss. The government submits that that is simply unworkable. What we have to work with is what was budgeted and what was approved by NIST, and anything that wasn't is a loss to the government.

Not only that, your Honor, we are talking at least --

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now we seem to be talking about the difference of maybe \$10,000 between two thresholds in the guidelines. The defendant's calculation that he gave you a few moments ago doesn't even include the cleaning expenses, and that's several thousand dollars two years in a row. And that I just don't see the argument there. Again, the only argument could be, as he said in his papers, was that you need to clean in order to make the computers work. That simply doesn't hold water.

This is an indirect expense, something that is disallowed by the grant and was never budgeted and never approved. That is a loss to the government. It was money that was spent in contravention of clear rules that were set out governing the grant fund.

So given the fact that we are literally arguing now about a couple thousand dollars here and there, and I believe -- we could sit here and tally up all of these nonbudgeted expenses. I guarantee you, we would be over the 120,000 dollar mark without any trouble whatsoever.

THE COURT: What's the applicable note that we apply here to losses?

MR. EVERDELL: Your Honor, there are a few. One is the estimation of loss, which just says -- that's 3A -- 3C, which says that the Court need only make a reasonable estimate of the loss, but also the special rules.

THE COURT: You're looking in the commentary.

1	MR. EVERDELL: I'm looking at the commentary, yes,			
2	your Honor.			
3	Commentary 3, which is loss under subsection B1 and			
4	then 3C, estimation of loss, said: The Court need only make a			
5	reasonable estimate of the loss. And the Court's loss			
6	determination is entitled to appropriate deference. And then			
7	if you look at F, which are the special rules			
8	THE COURT: I just want to see one second because I			
9	have trouble, I guess, in determining whether or not it should			
10	be loss to the government or misappropriation.			
11	MR. RUBINSTEIN: There is another basis			
12	THE COURT: Intentional misappropriation by the			
13	defendant. It seems to me it should be intentional			
14	misappropriation by the defendant.			
15	MR. EVERDELL: An intentional misappropriation, your			
16	Honor, would include the fact that he was told that he needed			
17	to submit all of these charges in his budget and get prior			
18	approval for them.			
19	THE COURT: The fraud and deceit element is somewhat			
20	lacking.			
21	MR. EVERDELL: Your Honor, as you, I think, pointed			
22	out earlier, the case law shows that you can have a			
23	misappropriations case even if the expenditures arguably			
24	benefited the company. That's the Urlacher case.			
25	THE COURT: Isn't this application to the benefit of			

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the defendant, or third party?

MR. EVERDELL: Or to the defendant.

THE COURT: That's under one of these guidelines. Which is it?

MR. RUBINSTEIN: No, it's not, Judge. That is for the purposes of guilt. We are talking now for guideline purposes determining the loss, which I suggest is a different analysis. I think your Honor should be directed to 2B1.1, 3B, where it says gain. This is an alternate method for the Court to use.

THE COURT: Let me find you, where you are. Now you're going to the commentary.

MR. RUBINSTEIN: I'm in the commentary, Judge. says gain. The Court shall use the gain that resulted from the offense as an alternative measure of loss only if there is a loss, but it reasonably cannot be determined. And I submit to your Honor that under these circumstances you cannot reasonably determine what the loss is, so you should look at the gained factor which in this case would result in looking at the rent, the \$62,000; the utilities; cleaning, if you want; meals, and you would be just over \$70,000. I think that is the appropriate analysis here before you consider any credits or offsets. But first we have to arrive at what is an appropriate figure. Obviously, the guideline considers the fact of what someone actually puts in their pocket for personal benefits.

MR. EVERDELL: Your Honor, I have not looked at the

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case law on this recently and it was not cited in any submission by Mr. Rubinstein, but I think the loss can be reasonably determined based on the numbers set forth by the government. I don't think we need to rely on any alternative method of loss because we can determine what the government lost as a result of all of this.

I think, if I remember correctly, the cases where you talked about alternative loss calculations is where the victims -- there are so many victims and the calculation involved things like stocks and how the value of stocks go up and down and how that's very hard to estimate. Here we are talking about hard numbers. We know what grant money went to the defendant and we know what he spent it on. The question for your Honor to consider is which of these expenditures are you consider as a loss to the government and which are not.

THE COURT: Insofar as the misapplication involved fraud, then I think you used loss. Insofar as the misapplication is intentional -- this application seems to be a different definition of intended. Then it seems to me to use the gain to the defendant or a third party. But I can't see where I am in the guideline notice. I don't see that it really applies under the guideline notes. So what I just said isn't supported by the guideline notes.

MR. RUBINSTEIN: What's that, your Honor? I missed that.

Sentence

1	THE COURT: What I just said isn't supported by the
2	guideline notes, as I see it.
3	MR. RUBINSTEIN: What's that, your Honor?
4	THE COURT: I gather that you only apply gain to an
5	intended misapplication, you apply loss to a fraud case if it's
6	done by a fraud. Then you apply loss. My problem from the
7	beginning here has been that distinction. I am not sure you
8	apply loss here.
9	MR. EVERDELL: Your Honor, the commentary that the
LO	government was following was actually in combination with a
L1	reasonable estimate was the 3F special rules.
L2 -	THE COURT: Let me look at the rules.
L3	MR. EVERDELL: 3F2, government benefits, which is also
L4	the section that was cited by the defendant in his letter,
L5	which says: In a case involving government benefits, e.g.
L6	grants
L7	THE COURT: It says: Subject to the exclusion and
1.8	subdivision if the loss is the greater of actual loss and
L9	intended loss. In a sense, the whole thing, the whole
20	agreement was a loss to the government.
21	MR. EVERDELL: Yes, your Honor. In fact, the
22	defendant never even did his cost share, as we know, and was
23	essentially not entitled to any of the grant money that he
24	spent.

THE COURT: There was his contribution later, wasn't

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1	there some money?			
2	MR. EVERDELL: I think after the grant was suspended			
3	there was a contribution by the defendant.			
4	THE COURT: That went to outstanding bills.			
5	MR. RUBINSTEIN: That money was probably extended.			
6	That's the whole purpose. It increases your budget.			
7	MR. EVERDELL: Your Honor, the government told the			
8	defendant that in order to comply with the cost share he had to			
9	make payments to the government and that's the payment that was			
10	made, but I believe this was after			
11	THE COURT: That's more than the cost share			
12	MR. EVERDELL: I'm sorry. He did not make that			
13	payment.			
14	THE COURT: The \$70,000.			
15	MR. EVERDELL: You are talking about the \$70,000			
16	loan			
17	THE COURT: There is some statement in these papers			
18	that he gave 70,000 after the closing period.			
19	MR. EVERDELL: That \$70,000, which I believe			
20	Mr. Rubinstein was saying was done between July 27 June 27			
21	of 2003 and August of 2003 was after the suspension.			
22 .	THE COURT: What was that used for?			
23	MR. EVERDELL: One moment, your Honor.			
24	Your Honor, I believe my understanding is there were			
25	outstanding invoices at the time that the \$70,000 was used to			
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pay the outstanding invoices. It was not actually used to pay the government any of the cost share amount. So that didn't translate --

MR. RUBINSTEIN: You never pay the government the cost share. You put the money in so you take the money out and spend it. That's the concept. The money --

THE COURT: It doesn't go to the government. It goes to the budgeted items during the period of the grant. Before it was suspended --

MR. EVERDELL: I think that is the point, your Honor. It wasn't before the grant was suspended. The grant was suspended on June 27, 2003.

THE COURT: To keep CASI going.

MR. EVERDELL: But under the guideline rules, if the fraud, if the misappropriation is discovered by a government agency, that is the point at which you start -- you cut off people from getting credit from payments they make later. And as I think I outlined in the government's letter to the Court, that date predates the suspension date because we had testimony from Hope Snowden who testified that when she was getting revised budget submissions at the end of 2002 and the beginning of 2003, she noticed there were serious discrepancies in the budget numbers and that raised red flags to her that there may be some problem with the appropriation of these funds and that led to them calling it off.

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THE COURT: I think that's covered in my opinion.

MR. EVERDELL: That is the date of discovery and the defendant is, in fact, not entitled to a credit for any funds he may have given back at that point because the misappropriation was discovered.

MR. RUBINSTEIN: That's not, your Honor -- I'll take a look at your opinion. That's not the date of the discovery from the standpoint that the defendant put monies back because he thought that it was discovered he did something wrong. The bottom line is, he didn't think he did anything wrong. That's the whole concept of the discovery is that we don't want somebody to run back and put money in after they find out that their theft has been discovered.

This is a misappropriation case and he did not feel —
he was a he then — that he had done anything wrong. And it's
his mental process, not their mental process, because the whole
concept is, hey, if you get caught stealing, at that point,
when you give it back, it's not the same as if you did this
voluntarily because you realized you did something wrong and
you wanted to make amends before it was detected. So I think
that they have the wrong person that has to be aware of when
there is something wrong here.

THE COURT: I see that this section, subsection of the commentary, subsection II says, in a case involving government benefits, entitlement program payments, losses shall be

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considered to be something obtained from unintended recipients or diverted to unintended uses. The problem I'm having is that there is more than one statute -- the statute deals in terms of fraud in one case and intentional misapplication in another. And it does seem to me that benefits obtained by unintended recipients deals with intentional misapplication of funds diverted to unintended uses. The second part of this note to the quidelines is more difficult to apply in intentional misapplication of funds in terms of showing that it was an intentional misapplication. All the evidence in the case kind of shows that when confronted with misapplying the funds, he would say things like, my mother has got the money or something else, I'm working on it, they are going to come along, and the ladies down there at the program love me and everything is going to be all right. Never does he make a statement, at least to these parties, the hell with rules, I'm taking the money. They owe it to me for my research.

I find it difficult to apply the guidelines in this case. Maybe the guidelines make it a situation that didn't occur to the drafters of the guidelines. It's not the usual case, as I understand it.

Are there other cases of this sort that either party is relying on involving the intentional misapplication -- are there other cases involving the intentional misapplication of funds as opposed to fraud, embezzlement?

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MR. EVERDELL: I looked for some cases that talked about loss amount in sentencing. I didn't find anything very helpful in that regard. What I was going with was literally what I got from the guidelines.

But I still don't know why it's difficult to apply diverted to unintended uses in this case, that prong of the quidelines, special rules for government benefits, because that seems to me to be the definition of misapplication. taking funds and applying them for unintended uses, unintended in this case by the people who gave out the grant money, NIST. And unintended in the sense that they gave out the money with lots of rules attached to it, that they made clear to the grant recipients and those were the intended uses of money, that is, expenditures that followed the grant spending rules. anything that did not follow the grant spending rules was an unintended use of that grant money. I think that was made very clear to the defendant in this case and, from the testimony, to all grant recipients, that things like the kickoff meeting and other things like that. I think that is actually the appropriate part of the guidelines to be applying in this case, that the money that was spent, contrary to grant spending rules, was diverted for an unintended use and that that constitutes a loss.

Now, your Honor raised some difficulties you had with the calculations for certain things and whether overbudget

expenses should count or should not. We have, at least, I think, provided a more simplistic and one that benefits the defendant way of thinking about this, which is just looking at the unbudgeted categories. Those are clearly cases, money that was spent contrary to the grant rules because there was absolutely nothing in the budget that spoke to it. These are monies that were expended without any reference to the grant rules whatsoever.

Now, defendant can argue that these things arguably benefited the research in some way. Perhaps they did, but that's not the standard that we need to operate with because that would sweep in every single expenditure. There would be no loss in any of these types of cases if that's the way we have to look at it. If you look at the unbudgeted categories and you apply to unintended uses, being diverted contrary to the grant rules, that provides a framework for the loss amount that's appropriate in this case.

MR. RUBINSTEIN: Your Honor, I think that this case is outside the heartland because I don't think anybody envisioned a case where somebody got a grant, spent all their time and energy on that grant, bought equipment in furtherance of the grant. There is no suggestion here. As a matter of fact, Lide even testified that Dr. Karron met all the benchmarks, and your Honor said something that I have to take opposition to, suggesting that nothing came of this research.

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THE COURT: No. Saying that the project wasn't completed, so I suppose that they didn't get their money's worth in that sense.

Because the government gets MR. RUBINSTEIM: No. their money's worth since they didn't have a financial benefit, no matter what, and that the whole concept was that if something was developed, Dr. Karron and CASI would keep all the profits for themselves. Society would benefit. They were doing research on a cutting edge. We have to go back seven years ago. Now it's commonplace. But they were dealing with the concept of -- I hope I pronounce this right -- topological imaging that they use today in many medical factions.

I submit to the Court and the government a paper that was submitted for publication, citing work that was submitted to a medical journal, citing this work because, in fact, that was the whole purpose of this research. That's why the grant was given, to develop this concept, at a time where they use computers half the size of this room. Today they probably could use a laptop and get the same information. I know I have it here. Just a second, your Honor.

THE COURT: I'm not taking issue with that, Mr. Rubinstein. I am not taking issue with that. It never came to fruition with the commercialization of the process, as far as I know.

MR. RUBINSTEIN: They are talking about the amount

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that Dr. Karron received and the figure that we started out with from -- as to salary, it seemed to me that that figure, as I cited in my submission of October 17, on page 3 -- first of all, they have 129,850 in loans. This is at 110, Government Exhibit 110, 38 through 40 of 44, the second portion of 110. They show 129,850 loans to Dr. Karron. We dispute one, and I have backup for it, a \$750 check that was really for Scott Alba that was advanced from defendant out of his own money. Then December 30, '02, 15,000 check that's for reimbursement.

Doesn't say anywhere on that check where it says loan, we reduced those numbers.

THE COURT: Why do you say that shouldn't be -MR. RUBINSTEIN: Because that was a partial
reimbursement. There is nothing on that check --

THE COURT: If he writes a check and it says partial reimbursement on it, isn't that reimbursement for loans taken?

MR. RUBINSTEIN: It's partial reimbursement because the medical expenses that were on the credit cards --

THE COURT: What's partial reimbursement of expenses taken? I don't know what you're talking about.

MR. RUBINSTEIN: Out-of-pocket expenses that he paid on the MasterCard that's in evidence. They never give him credit for the monies that we have the documentation that we submitted to the Court, and I have additional documentation showing -- not only showing that these bookkeeping entries gave

. 1	back 67 \$75,000 that was given back by salary paychecks that	
2	he never gets credit for. It seems to me when they came up	
3	with the figure that they used for his salary, they included	
4	the 60,000 of rent. I mean, they have never said	
5	THE COURT: I don't think it did.	
6	MR. RUBINSTEIN: If you look at pages 38 through 40 of	
7	Exhibit 110, the one that ends in 44	
8	THE COURT: 1 and	
9	MR. RUBINSTEIN: The second half of 110 has 38 of 44.	
10	The beginning part says	
11 .	THE COURT: 38 of 44, yes.	
12	MR. RUBINSTEIN: We have 38 of 44, 39 of 44, 40 of 44.	
13	It starts out on the top of 38 saying, Dr. Karron's loans. I	
14	have the check that I submitted as part of it on the \$15,000	
15	loan. It doesn't say anything about loan. Here she puts DPK	
16	loan, but there is nothing on the check to indicate loan.	
17	There are other checks that do say loan. So why	
18	THE COURT: Which one is that?	
19	MR. RUBINSTEIN: Just above the line for loan repay.	
20	THE COURT: I see it. I see that.	
21	MR. RUBINSTEIN: This is 9/12/02, check 10451, it's	
22	written to Dr. Karron.	
23	THE COURT: Can I see the check?	
24	MR. RUBINSTEIN: Yes, your Honor.	
25	THE COURT: It's a check payable to Dr. Karron. It	

1	says something. It's deposited. It isn't salary. Why isn't
2	it a loan?
3	MR. RUBINSTEIN: Why is it a loan? It's a
4	reimbursement. It doesn't say anywhere what it is, but they
5	classified it as a loan.
6	THE COURT: I would, too, if I see it paid to him.
7 .	MR. RUBINSTEIN: They have other checks, your Honor,
8	where it says loan on it.
9	THE COURT: Where does it show as reimbursement?
10	MR. RUBINSTEIN: It doesn't show on that check. We
11	understand it's on the check stub.
12	THE COURT: Reimbursement for what? It's a round sum.
13	It sounds rather strange to be a reimbursement.
14	MR. RUBINSTEIN: This comes out of the Quick Books,
15	you will recall, your Honor, the computer-generated software
16	that they had, so it's in that software.
17	THE COURT: For 15,000 round dollars?
18	MR. RUBINSTEIN: You have to have an invoice
19	THE COURT: You never have a reimbursement like that.
20	MR. RUBINSTEIN: He had a number of items. He took
21	15,000
22	THE COURT: It just happens to add up to 15,000. It's
23	very strange. Let's see the backup.
24	MR. RUBINSTEIN: Your Honor, if you can give us a
25	short recess. Dr. Karron came with the computer. He forgot to

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1	bring the power supply. We could generate it right here. We
2	have it in the computer. If he can recess
3	THE COURT: Doesn't show rent, does it?
4	MR. RUBINSTEIN: Yes. He has everything in the
5	computer in the Quick Books that are in the computer. We don't
6	need
7	THE COURT: This doesn't show that the amounts taken
8	for rent were part of the salary computation.
9	MR. RUBINSTEIN: What I'm saying, Judge, I was trying
10	to add up the numbers to get to her number. And the only way I
11	could do that was by throwing in the 60,000 for salary so that
12	if, in fact, his salary is accurate, which he has
13	THE COURT: I've got to get this sentence completed.
14	We can take a five-minute recess, if that's what you want.
15	Take a five-minute recess then, but I don't think it's going to
16	make much difference.
17	MR. RUBINSTEIN: All right, Judge.
18	(Recess)
19	THE COURT: Mr. Rubinstein.
20	MR. RUBINSTEIN: Your Honor, Dr. Karron purchased the
21	necessary part actually, I gave him my credit card and
22	the machine is booting up. We should have it momentarily.
23	MR. KWOK: Your Honor, while we are waiting, if the
24	Court pleases, we could go to talk about the 3553(a) factors,
25	which is another major factor.

1	THE COURT: I want to deal with the computation. Then
2	we can deal with the 3553(a) factors.
3	When will you be ready, Mr Rubinstein?
4	MR. RUBINSTEIN: Your Honor, do you have a computer
5	screen that we can plug into to show you that would be more
6	efficient to show you?
7	THE COURT: No, I don't have one here.
8	MR. KWOK: Your Honor, just to save time on this, I
9	think that what they are trying to print out is the Quick Books
LO	ledger, which is not in evidence, which is not authenticated,
11	which is a document that witness after witness have
12	testified
13	THE COURT: I don't know what he's trying to print
L4	out.
15	MR. RUBINSTEIN: It doesn't have to be in evidence for
16	the purposes of sentencing, your Honor.
L7	THE COURT: What are you trying to print out?
18	MR. RUBINSTEIN: We are trying to print out the backup
19	to that \$15,000 check to show your Honor that, in fact, that is
20	not a loan; was, in fact, a reimbursement.
21	THE COURT: I am not going to make the findings on
22	that issue. I am going to make the findings on the basis that
23	Mr. Everdell suggested. And taking the amounts in the other
24	categories that are not included in the budget and making the
25	adjustments he talked about, giving the defendant credit for

1	the utilities and all. It seems to me that the amount of the
2	loss, pursuant to guideline 2B1.1, is more than \$120,000.
3	Isn't that your correct conclusion, Mr. Everdell?
. 4	MR. EVERDELL: Yes, your Honor, that's correct, more
5	than 120,000 adding ten points to a base offense of 6.
6	THE COURT: I think that's borne out by the figures
7	with adjustments that you pointed out, Mr. Rubinstein, as the
8	total loss to the which should be computed, intended loss
9	which should be included for guideline calculation purposes,
10	which makes a total loss of 16 levels.
11	MR. RUBINSTEIN: Your Honor, I think your Honor has to
12	consider the credits against whatever loss your Honor has
13	THE COURT: I don't think there are any credits
14	MR. RUBINSTEIN: Your Honor, I submit that under
15	the that the amount of salary that they have calculated is
16	not supported by any documentation they submitted.
17	THE COURT: In that tabulation I agree with you, that
18	the entry includes salary and loans as they calculated it, but
19	it doesn't make much difference because the 80,000 odd dollars
20	that the defendant was entitled to redistribute are
21	incorporated in the equipment
22	MR. RUBINSTEIN: I submit, your Honor, under their
23	figures
24	THE COURT: Other entries.
25	MR. RUBINSTEIN: I submit under their figures, Judge,

1	that they have added back the \$60,000 rent. If you take a
2	look
3	THE COURT: There is no showing of that.
4	MR. RUBINSTEIN: There is, Judge. They have not shown
5	you at all where they get the figure that they have in 114.
6	And I submit the only backup is on page 38, 39, and 40 of
. 7	Exhibit 110 of 44 pages. And the only thing they have there is
8	a loan which they claim is \$129,000, repayment is 37,000.
9	Taking their best figures
10	THE COURT: You haven't gotten any salary
11	MR. RUBINSTEIN: Salary of 37,000 of, rather,
12	35,000, and you have to add the \$60,000.
13	THE COURT: I've got to take into account on the
14	salary the figures that apply to withholding taxes, et cetera.
15	MR. RUBINSTEIN: Yes. I don't disagree with that,
16	Judge, but I submit that they have a \$129,000 in a loan and
17	they don't show the repayment of the 67,000.
18	THE COURT: Repayment is right below it.
19	MR. RUBINSTEIN: No. They don't include it there.
20	The two checks that I submitted to the Court that I have copies
21	of with the backup showing
22	THE COURT: Those checks are after the close of the
23	period and were for, as I understand it, expenses incurred
24	thereafter.
25	MR. RUBINSTEIN: No, your Honor. We are talking about

1	two separate things. We are talking about, one is the salary
2	that is submitted in our letter of the 17th where we provide to
3	the Court check of August 2, '02, a year before the grant was
4	suspended, actually ten months before the grant was suspended
5	where you have that's in evidence
6	THE COURT: Where are you reading?
7	MR. RUBINSTEIN: I'm looking at our letter of October
8	17, your Honor. And I am showing you what was previously
9	marked as Defendant's P6 in evidence, which shows
10	THE COURT: You'll have to show me and you'll have to
11	show Mr. Kwok.
12	MR. RUBINSTEIN: Mr. Kwok has the page. He has turned
13	to it.
14	THE COURT: \$5,000 check?
15	MR. RUBINSTEIN: Yes, your Honor.
16	THE COURT: That shows the defendant had taken \$61,918
17	in salary just below it.
18	MR. RUBINSTEIN: Right. And that
19	THE COURT: 61,000 plus 129,000. If that's the
20	government's figure, adds to more than \$200,000, right?
21	MR. RUBINSTEIN: No, your Honor.
22	THE COURT: \$187,000.
23	MR. RUBINSTEIN: The Court is commingling two
24	different concepts. One is they claim there is a loan
25	outstanding that they never gave him credit for anywhere of

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1	\$75,000 that was taken in October of 2001. I think the date
2	was October 25 or 26 of 2001.
3	THE COURT: That's what the loan advances.
4	MR. RUBINSTEIN: It doesn't show the offset of that
5 ·	loan. What I'm showing your Honor is
6	THE COURT: I know you had offsets for the loan. I
7	have given you credit for that and I have gone over your
8	figures in your letter and I've made calculations on the basis
9	of it. It shows me that there is still a net payment due the
10	government on loans.
11	MR. RUBINSTEIN: But when you add that together with
12	the salary, it shows that Dr. Karron did not get his full
13	salary.
14	THE COURT: I agree he didn't.
15	MR. RUBINSTEIN: So he should have an offset under
16	guideline 2B1.1(3)(e) for credit against loss for services
17	rendered. He rendered the services, he was entitled to full
18	salary.
19	THE COURT: He got it in the form of loans.
20	MR. RUBINSTEIN: I submit, Judge, that it doesn't
21	compute that the loan calculation does not compute to what
22	they are saying and I submitted in my letter
23	THE COURT: He got it in the form of loans. It's very
24	simple.
25	MR. RUBINSTEIN: Your Honor, in my letter I showed the

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THE COURT: If you take the money from the corporation in loans --

MR. RUBINSTEIN: He took loans, but he paid it back out of these salary --

> THE COURT: In part --

MR. RUBINSTEIN: In part. So that left, your Honor, a balance in a worst case -- in a best-case scenario for the government of \$24,765.81, and you have to add to that the 60,000 from the rent.

THE COURT: No, you don't. Add to it?

MR. RUBINSTEIN: They did, though. They have never submitted how they arrived at their figure of the 200,488 in the chart, 114.

THE COURT: All I have to do is use my best judgment on the figures that are here. I exercised them and I have read your papers and I've taken them under account and I have somewhat struggled with them, I must admit that. I've calculated his credits for salary not taken and offset that against the loans. I still get the balance of loans due the corporation from Dr. Karron of several thousand dollars. Without taking into account in any way the rent he received of \$60,000.

MR. RUBINSTEIN: In all due respect, Judge, I don't see how that is possible. Nobody has shown me to this point.

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The government hasn't proffered how they come to their figure.

I frankly don't comprehend it, but I think that even --

THE COURT: I think you've got to read salaries, Dr. Karron's salaries, as salaries plus loans.

MR. RUBINSTEIN: I do, your Honor.

THE COURT: The loan entries.

MR. RUBINSTEIN: I do. I see an entry for \$75,000 as a loan and I don't see any salary -- I don't see the balance of the two entries that I submitted to your Honor --

THE COURT: If he had taken the salary, you'd have a worse situation because you then have the payments due the government for withholding that weren't made, social security weren't made, the other payments of taxes not made as a result of taking less salary. The situation would be less if he had taken all his salary. He would have a worse situation confronting him.

MR. RUBINSTEIN: Do I understand that the Court is not giving him credit for the \$70,000 that he contributed in July and August after the grant -- this is money that he took out of a home equity loan, and I submitted the documentation to show that.

THE COURT: I went into that earlier in front of you with counsel and it was stated on the record, without any exception taken, that those monies were for additional expenditures that have been made between June 30 or June 23 and

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te of payment of those amounts.

MR. RUBINSTEIN: But he should get credit for that. are expenses --

THE COURT: Depends on when the expenditures were made s stated in open court and not objected to by you, these xpenditures that occurred after the period of the audit.

MR. RUBINSTEIN: The audit, your Honor -- the audit occur --

The audit didn't occur until later, THE COURT: sly, but books and records were reviewed as of the date 3, as I understand it, the date of suspension.

MR. RUBINSTEIN: He was unaware of that. As a matter t, Judge, you may recall the testimony that he didn't e a copy of the audit until September, so he was totally e of any discrepancies. He understood that the grant was ded because --

THE COURT: It doesn't matter whether he was aware of It's irrelevant.

MR. RUBINSTEIN: I think, Judge, that the concept is, e's aware, because it's when he becomes aware whether or s intention in making compensation was motivated by a mind.

THE COURT: All I know -- I am going to take that into account in connection with the 3553(a), but not taking the guideline computation. I'm making the guideline computation as

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I've stated, and on that basis. And I'll hear from you further on 3553(a).

MR. RUBINSTEIN: Yes, your Honor. I think that this is a case that is very unusual in that Judge Rakoff used this language in the case that I previously cited, and I have a copy for the government and your Honor, Adelson. Unfortunately --

You'll want your notes, won't you?

MR. RUBINSTEIN: Judge, Judge Rakoff said that there are --

of the case do you want me to refer? I think I see a little error in the opinion, but it's not -- the six or seven points under the base level doesn't depend on the date of the offense. It depends on the maximum penalty for the offense. Here the maximum penalty was ten years, so only six points are allowed. If it were 20 years, it would be seven points. It has nothing to do with the date of the offense. It has something to do with the maximum penalty on the offense.

Give me something else.

MR. RUBINSTEIN: I have the language.

THE COURT: Tell me what you're relying on, because he's probably right.

MR. RUBINSTEIN: I'll try and find it as I'm reading it here, but I have the quote. There may be cases in which the offense level determined under the guidelines substantially

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overstates the seriousness of the offense.

THE COURT: You can get that in securities cases because of the number the people who lose as a result of the fraud committed by the officials of the company. The stock is publicly traded and, therefore, you have a number of transactions involved, so you get tremendous losses, as you do in this case, Adelson case. This is a different case.

MR. RUBINSTEIN: He was referring to that, Judge, and you're absolutely right --

THE COURT: I'm fully aware -- I understand that.

MR. RUBINSTEIN: In this case, your Honor, it is a unique case and the government cannot point to one case like it because there is no case like it. And I think that the guidelines overstate the seriousness of what happened here.

There is no question that the United States Government afforded Dr. Karron an opportunity to do research. They had no vested interest financially in the product of his research. Even though he has a business background that dates back over 20 years, he was ill-equipped to handle these funds. And if you could see the way he withdrew money, just the dates when he did it, whether you call it a loan or a salary, you see he functioned as if whenever he needed money he would take it.

So he didn't take a salary until April or May of 2002, eight months into the grant. He takes his first salary check. Before that he's taking loans. At the end of the year he winds

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up that he owes all this money that he had taken as a loan back in October 2001, so they take it as salary at that time.

All his efforts and all his energies were devoted to this project, to do the research that the government wanted to be performed for everybody in society's benefit. That's why he got this grant. And when they say credit against loss in 2B1.1(e), they are talking about monies returned, fair market value for the property returned and the services rendered. There is no way to quantify what the value of what Dr. Karron created at that time in this topographical imaging that's used today in all kinds of surgeries and what benefit it was to the nation and to the world.

I think that that takes this case out of the heartland because he, as you know from everything said, he didn't get involved here to benefit himself financially. He took the rent money. He shouldn't have taken it. He owed debts, so he paid the debt with the rent money. That was wrong. That was wrong.

I think that this case goes outside the heartland, that your Honor should consider 3553 Title 18, U.S.C., and consider giving him a nonguideline sentence. And I think that because you sat through a trial with Dr. Karron and you know all the evidence and the background and the way he was advised by people not to do this, not to do that, and he, like a bowl in a China shop, insisted on doing it his way, that is why there is really a legitimate likelihood that if he had followed

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protocol and followed procedure that he would not have been sitting here as a defendant in a criminal case.

It seemed that although the budget, which he submitted. Remember, he submitted a budget. He put down 110,000 for equipment. That was what's accepted. He put down for subcontractors, he put down 250,000. He found that he could get students for free. Is he entitled to an offset or consideration for that because he didn't spend the government's money on subcontractors and got free employees to do a job?

There is no suggestion here that the equipment he purchased he used for other items other than this project. government, by law, owned this equipment. Yes, at the end of the day it was possible for a grant recipient to get possession and benefit from that equipment, but, in reality, he was using government money to buy government equipment which the government took back. They not only took back their equipment, they took back everything, piece of equipment that he had, whether they had any right to it or not, and they kept it.

So that's where he found himself in this case. think when you look at the way he managed his money, he saved the government considerable money on subcontractors. He saved them, according to the government's own figures, in the first year \$174,000 just on subcontractors. He got the work done, but he didn't have to spend the money because he did something he wasn't supposed to do. He wasn't supposed to have employees

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without approval and we had testimony of that.

And in the second year they revised the budget and 110,000 for subcontractors and he used 6100. You know from the testimony here that there were numbers of people working in that apartment on these computers, on this project. And the government wasn't billed for it. Why? Because he was using students. Does the government get a benefit of that? They do.

That is why, your Honor, the mathematical considerations of a strict guideline calculation doesn't apply in this case because Dr. Karron, with good intentions, and good intentions meaning that he wanted the research to work, because that's all he cared about. Those were the good intentions. might have used improper means, but the intentions were there.

And he created a product which people built upon and I have a manuscript that was submitted to the Elsevier Editorial Systems for computer medical imaging and graphics. This is a draft manuscript that was submitted, hasn't been published yet, but it may well be published in the near future. It cites ATP, it cites Dr. Karron, and it shows that the work that he did may have a significant value. So it's hard to say what the value was, but I don't think anybody in this room could say that he didn't do the research that he was contracted to do.

I think your Honor has to consider the 3553 and ask yourself whether or not his background, this offense, his character, is such that should cause your Honor to impose a

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nonguideline sentence.

I think the fact that you're dealing with a man who frankly has a lot of issues. He's not a man anymore. He's, in fact, legally a woman. I spoke to the BOP. Rather, my office did. And he is and as the probation report says, he will be treated as a woman and, if confined, he will go to a women's prison. We submitted letters from people who know him. He has a generous good side to him. He has no criminality in his past, and I think that he will have no criminality in his future.

His mother is incapacitated. She is in a home. They are hopeful. He is now living in that house in Long Beach.

Amongst the things he lost here, he lost his home. He is hopeful -- and I spoke to his brother about this. I have a letter from his brother that wasn't included in the original submissions. I am not going to burden the Court with it. He says when his mother needed assistance in the slightest way, the defendant was the one who was there because he was the closest to where his mother was situated in Staten Island, and he's hoping to be able to take his mother home, and he's learning to work a ventilator because she needs that in order to breathe, and that is the hope, that he can stay in the home there.

So I would ask your Honor to consider under, all these circumstances, to fashion a sentence that doesn't have

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confinement in a federal institution, that has house arrest, that he could function from the home that he's presently residing in Long Beach; and when his mother gets out, he can assist her there, and provide for restitution out of his future earnings, if he's able to earn anything.

He has been severely compromised in his profession. He has been turned down for positions because this case received a lot of notoriety. They talk about general This case has sent a shock wave through the scientific community as to how they ought to comport themselves when dealing with federal grant and federal monies.

There is no question that he will never be eligible --I don't say never, but, in all probability, will not be eligible to any federal funding so that he could go ahead with his research, which is his life's work, is to do scientific research. And the question is what sentence would be appropriate under all these circumstances, and I don't see that based upon his background and characteristics that confinement is necessary here based on his history and character, and I think that that sort of sentence will be as much as necessary and not more than is necessary as the cases seem to say what punishment should be.

Dr. Karron would like to address you, your Honor, and I know you'll afford him that opportunity.

THE COURT: Does the government want to say something

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MR. KWOK: Yes, we do.

Your Honor, we spent a good part of the afternoon arguing about loss amount, and rightly so, because the numbers can be a little bit confusing. But the defendant's conduct, when distilled to its essence, it is very clear what he did. This is not the case about someone forgetting to cross the Ts or dot the I's. This is not the a case about a technical If it were, the government wouldn't have been able to show intent, and the jury wouldn't have been able to return a quilty verdict. And the jury in this case convicted the defendant because the defendant's intent was clearly shown at trial.

The defendant was repeatedly told to stop. government wasn't in this to trip someone up. The trial testimony established that the people who administered the grant wanted to succeed. That's why they kept telling him and kept working with him to explain the rules to him time and time again ad nauseam. Every one of those times he could have gotten himself out of the hole that he was digging, every one of those times he could have stopped. And none of what he did, none of that money that he would spent would have even been reported to the Department of Commerce, the inspector general's office, much less prosecuted by our office, and, ultimately, the case brought before your Honor.

Of course, the defendant never stopped. He kept misusing the grant money. And not only that, he tried to muck around, as Frank Spring testified, with the company's books to hide his tracks. And Mr. Rubinstein just now talked about him spending less money than he's allotted in the category of subcontracting. And the reason that's so is because he could use students so there was more money left so he could pay himself.

So everything ultimately comes back to how he could use the grant to benefit himself or his company that he owns, CASI, time and time again.

In his e-mails to his friends he didn't mince words about what he was doing. He was, in fact, brazen and open about what he was doing.

THE COURT: I don't think there is any evidence that he used the students so he could pay more money to himself.

MR. KWOK: There is evidence in the record that equipment under \$5,000 he would be able to keep at the end of the day.

THE COURT: It may be that it benefited him, but I am not sure from the evidence that he actually intentionally said, I am going to use students rather than subcontract so I could get money for myself. I don't think the record establishes that.

MR. KWOK: Let me go to the larger point. The larger

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point is, when no one was looking, when he thought no one was listening, in his e-mail to his friends, he was open about what he was doing. In the e-mail to his friend, he said he wanted to make a lease with his friend living in Connecticut, so he could "make like I only keep a folding bed on 33rd Street. And if ATP buys into this idea, then I can charge my rent on the apartment to the grant and pay my mortgage." He said in another e-mail that if the ATP people didn't agree with him he would turn the grant into enough of a train wreck so the government would be forced to negotiate with him and, quote, find a liveable solution for all.

Now, certainly in that e-mail, after his crime was detected, at no time did he show any remorse. He didn't take any responsibility for his actions. Instead, he tried to engage in, essentially, financial black mail of the government to strongarm the government to accept his fait accompli because he has misspent so much of the government's money. And this kind --

THE COURT: I saw that that was what he might think about doing. I don't think there is any evidence in the record that he strongarmed or attempted to strongarm the government is such.

MR. KWOK: 1 would submit to the Court that's what it means when he says, I would make the grant enough of a train wreck so that they can find a livable solution for all.

THE COURT: That was one of two alternatives in that e-mail that he mentioned, rather to pay more, I think -- more

money to cover the expenses or to make it a train wreck.

MR. KWOK: It's the government's view that those e-mails, when you take them together, it shows the type of brazenness, the type of arrogance that necessarily warrants consideration under the 3553 factors because they go directly to the seriousness of the offense.

Let me turn now to the defendant. Of course, none of this conduct can be considered in a vacuum. It has to be considered in the context of this defendant. And here, too, the 3553 factors argue for a meaningful custodial guidelines sentence.

This is not the case about someone who broke the law because he was in dire straits where some sympathy might appropriately be shown. This is not a food stamps case, this is not a housing fraud Section 8 case where we also calculate the loss under 2B1.1 where sometimes those mitigating circumstances are present.

This is a defendant, who under the grant in year one alone, is given an annual salary of \$175,000, \$175,000 in taxpayer's money. That's a lot of money for a lot of people, but not for this defendant because he kept misspending the government's grant money to buy equipment that he knows he's not supposed to buy.

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Of course, the defendant is a Ph.D. scientist from one of the finest universities in the world. He did not have to steal to put food on the table. He didn't have to steal to

I think the defendant's characteristics under 3553 also argue for a custodial sentence within the guidelines.

find a place to live. But he did it anyway.

Finally, your Honor, a guidelines sentence is necessary in this case to serve the goal of the terms. Anyone paying any attention to any public policy debate in the past 10, 20 years knows that one of the prime arguments opponents of these government programs like to use is rampant, it is full of fraud.

We know that's not true in this case because we have ATP witnesses who testified that they keep a close eye on the grant. In fact, they have these rules so that they can closely monitor what the recipients are doing with government money. But there is fraud and this is one such case. And it's the government's view that when a clear-cut fraud case presents itself, there has got to be a strong deterrence, as reflected in a meaningful custodial sentence so that people who get this money will know that you can't just walk away and apologize and say, I shouldn't have done it.

Rather, as his business manager told him himself at the time, you could go to jail for this, and that message should be sent because it is the taxpayer's money, and for

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these programs to survive there must be a general deterrence message that if you misspend the government money and you get caught, you don't just get slapped on the wrist and let go.

For all of those reasons, because the defendant's conduct is intentional and repeatedly so, because of the characteristics of this defendant, and because of the need to serve the goals of general deterrence, the government respectfully urges the Court to impose a custodial sentence within the guidelines range.

THE COURT: Dr. Karron, would you like to say something at this time?

THE DEFENDANT: Yes, I would.

 $$\operatorname{MR.}$$ RUBINSTEIN: Where should he make the statement from, your Honor?

THE COURT: You can make it sitting there or standing, whichever you wish or she wishes.

THE DEFENDANT: How much time do I have?

Your Honor, I'm deeply sorry for what I have done, more sorry than I can convey with words. I have been doing -- I wish to apologize to the Court and to ATP, to Mark Stanley, who convinced me that I had a chance to win this grant, and to people of the United States, who I feel like I'm working for with this money.

I'm beginning to see that I violated their trust and it disturbs me tremendously for anyone to even think that I

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could do that. And if, in fact, I did, then I will take whatever punishment is appropriate. I can only state that I can perhaps explain myself a little bit better and maybe prevent other people from making the same mistakes I've made because I understand, from having lived through it, how the PIs, who receive large grants, think differently than the accountants and the grant managers that are responsible for the money.

And I feel terrible that B.J. and Jane, I got them in trouble. I got myself in a lot more trouble. My past five years have been hell. I thought I knew what I was doing and I recognize now that I really didn't know what I was doing.

I've spoken to other PIs, principal investigators, and I've seen them making the same mistakes, and I've tried to help them. And I know when somebody gives you \$2 million, it's like, holy cow, the government of the United States believes in me, they trust me, and they believe in my research. That's an intense thing.

I believed, and I'll admit that I was wrong, that I could use my salary to pay for everything that the grant -- that's indirect on the grant. I didn't know how to keep track of it. I didn't know that I should have taken a paycheck, deposited it into my personal account, and then write a check back to CASI, and CASI should have written a check back to the grant. Then there would be no confusion that I seem to have in

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Seven years ago I didn't know about accounting. I've always done contracts. I've never done grants. DARPA would give me money. They didn't care what I did with it, as long as I could produce the research that I said I could do. understood that a grant, you do whatever you can, but it's how you spend the money that's most important. I didn't know how to spend this money. I didn't think that I was throwing it away. I didn't think I was unduly enriching myself until a couple of years later I realized, I took too much money.

I didn't want to take money unless I absolutely needed It was like running a little business. The owner doesn't take the money unless you need it. I didn't want to take I just wanted to take \$2,000 at a pop for rent. I thought I could charge it against salary. And at the end of the day, I overdid it.

In the second year I thought I had made amends, but the budget was wedged. I never thought that I would be impaled on my own budget. When I wrote the budget I just needed to fill something in to get the grant out the door by the deadline. I asked a couple of ATP people, what is a reasonable salary? They said, don't worry. In fact, it says, don't worry, so I didn't worry. I was just going to do the research and that was it. I took a big advance so I could eliminate all my personal and financial problems. I didn't want to have to

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worry about the money. I wanted to focus on the research. And trying to run this project has destroyed my life. We kept the research going after the project was suspended because the research is mine. The grant doesn't tell me how to live. The grant tells me how to spend the government's money.

But, anyway -- I'm getting lost.

I'm bullheaded. I'm boneheaded. My exwife said I couldn't tell my friends from my enemies. That's really been true in this adventure. I'm a strange person. I let people come and go. I don't know. Just do whatever you want.

I had some brilliant students working on this project who should have been on the payroll. I didn't put them on the payroll. One, because either I was advising them on their Ph.D., or they were already on some other payroll. This whole issue of like, you know, do I take people and pay them more for the same hours? ATP also said, don't do certain things, what I understood I could do. I didn't understand.

I'm boneheaded. I'm also too bright for my own good. When people told me that I could -- when I started thinking that I could use Morse Theory in digital data, in discrete picture data, pixelated data, everybody said you can't do that, it doesn't work. Morse Theory only works for continuum mechanics, not where you have imagery.

But Jim Cox and I talked about it. I think I see a way to do it. Despite everybody telling me, no, no, no, that's

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not how you do it; this is how you do it. We persisted, and for ten years we came up with digital Morse Theory and now it's becoming part of the accepted panoply of topological image processing.

If I listened to everybody telling me, no, no, no, you can't do it, you can't do it, fine, I'll do something else.

When somebody says, you can't do it, I start blowing steam out my nose. There has got to be a way to do it.

We did get the power approved. I did have long discussions with B.J. and Jane about how we can fix this, how we can change this, what needs to be done. I made regular visits to Washington. I tried to keep in touch with my program managers. They came and visited regularly. We were making good scientific progress. But my attitude was, the hell with the financing, as long as I kept records. I have all of the source records. And give it to the accountant and she will figure it out.

And, you know, I never thought -- we didn't have a year's worth of running actuals to calculate a good budget.

And towards the end the accountant was telling me, this is an unliveable budget. You can't do this project with this budget.

You need to put a lot more money in. And without coinvestors and cofunding, you're going to get in trouble.

I thought that I could keep overhead minimal, take as little salary as I could, take rent instead of salary, which is

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a colossal mistake. It is more of a mistake than even this Court will understand. I have to pay tax twice on the money. This is the stupidest thing imaginable. It's like the absolute worst thing I can do. It inflated my income. The W2s and the 1099s from the grant show that I made \$250,000. That's too much. Because I took the same money, gave it back to the company, and paid it again. It was spectacularly dumb.

The worst thing is, worst thing is that my business managers, I really wish that -- we needed to get a new budget.

We needed to get a new budget approved. I think we were almost at that point and then I screwed up.

I'm responsible for everything I've done. I took responsibility. I kept records at the time I was doing it. I didn't think I was committing -- I was defrauding the government. I thought as long as I was doing good work, the research is moving ahead, we are presenting at conferences, I'm flying all over the country presenting. We are attracting students, we are attracting attention. That's what was important. In the past five years all -- I have bean counters going over and over and over. I'm still stuck in 2001 and 2003.

My career is over. My colleagues don't return my phone calls. I've alienated my wife and daughter. I've had a sex change operation. I am now going to live as a woman.

I didn't think -- I wanted my staff to be happy and

healthy. I wanted Nicky Winter, the bookkeeper, I wanted her to fix her teeth. I wanted to fix my teeth. I didn't want to have -- I wanted everybody around me to be happy. And I wanted them to know that the fringes were available. I didn't overspend the fringes.

After the grant was suspended I got a job with a colleague and I was much happier working for him than trying to manage my own grant. If I get out from underneath this I would like to advise Mark Stanley in the ATP program, now TIP program, what to look out for in PIs when you give them a lot of money. What are the common misunderstandings that a scientist will have when you give him a lot of money. My colleagues at City College said, we win grants, but we have almost no sale. I wanted to make my little company unique. I wanted to do things different. I wanted to do things nicer, better. I didn't know what to do and I didn't know what I was doing, and I ended up with a train wreck.

Lee Gurfein, my business manager, wanted to lock me up in a room and just give me a computer and let me out for air and exercise. He didn't make any coinvestment. My brother didn't have any signing authority until we had a contract with him and he gave me some money. I did everything he wanted. I did everything my accountant wanted me to do.

I did everything that Bob Benedict wanted me to do.

If he told me not to do something, I wouldn't do it. When he

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told me to stop paying the rent, it was getting to be a real problem, I stopped. I had to understand why. I didn't get it right. I made a mistake. I never thought it would be this big of a mistake. If I have to go to prison for it, then I'll go to prison for it. I made a mistake. I didn't think -- I hope -- I feel terrible that people feel I violated their trust, and I'll never be able to recover that.

I want to finish the Joe Morse Theory. It has nothing to do with money anymore. It's something that needs to be It's why ATP gave me the money. The research was more important than the money, but I didn't know how to handle the I think if I got a job as a grants manager, because I money. needed a job, having made every mistake twice, I would know how to prevent it. I have been advising other colleagues, that kind of attitude is going to get you in real big trouble. have told them that, and they usually get really mad at me.

Other ATP grants, when I talk with them, I said, be really careful, don't have a certain mind-set. You are not your grant. The grant funds certain activities, but don't put your ego, and get more than one grant and have more than one sponsor.

I thought I could do everything myself. everything so hard and so intensely and so monomaniacally, so bipolar that I usually get myself in trouble. This is the worst trouble I've ever got myself in. I don't know. Maybe

I've learned something from it. I tell people I made every mistake twice. It's like if anybody knows the lessons of managing federal and public money, so that everybody can look at it and say, yeah, there is no problem with that, I think I know how to do it.

I could probably pass the CPA exam now. Do I feel comfortable defending what I did, knowing what I did in 2001 with what I know now in 2008? Absolutely not. I made a mess. It was a big mess. But it was fixable. And I wasn't able to fix it. It was too much of a mess, and I just wanted to focus on the research, and I decided to do good work and maybe something good would come out of it.

If I need to go to jail, I'll go to jail. I would like to finish what I started. I would like to help the ATP program in the sense that I can probably smell fraud brewing in the mind-sets of the PIs. Because I have a sense now of what this entails, particularly in small startups, very small startups. That's what ATP wanted to fund, and they should continue to do it, but they need special supervision. When I was doing SBIR grants, they have special supervision for SBIR grants because the PIs don't always know what they are doing.

I don't have a home to go to. My mom is going to die soon. I want to bring her home to die.

Am I wandering off too far?

THE COURT: I couldn't hear you.

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THE DEFENDANT: Am I wandering off too far or am I becoming incomprehensible?

My mom is going to die soon. She is on a ventilator. She is on a feeding tube. I'm only trying to bring her home, with my family's consent, so that she is at least home, because that's where she always wanted to be. After she passes on, we are going to have to sell the house anyway because of the bills from the nursing home. If I have to go to prison, I would like to at least see her through.

I'm taking classes now on ventilator care, so at least -- we have three shifts of nurses at the house running a I need to be able to cover them. My Ph.D. is sufficiently medical, and I have enough insight on how to run a ventilator that I need a lot of training so I don't screw up, because I think I know what I'm doing, and Mondays are usually my days to go get training.

I pre-separated from paying myself rent because I thought I wanted to take rent as I needed it and not use salary, and just use my salary line to pay utilities and telephone and the legal cost, the bills to Pennie & Edmonds. Ι tried to keep a green check and a burgundy check. Green checks were nonprogram, burgundy was program.

But we didn't set up the account before we got the first payment from ATP. I took too much money at the beginning, and I tried to put it back. The way I tried to put

it back. Now I just did it all wrong. I thought it didn't matter where I spent the money out of. I just give ATP a stack of receipts.

I tried to keep good records. I got consumed with recordkeeping. It's like I was telling -- it's like I got buried in receipts that I lost and I never added them up. I just took pictures of them and filed them under each day and let the accountant deal with it. She got lost.

I think the best thing I can do for my country is prevent me from happening again. I don't know that I will ever personally handle big federal projects, but I think I can be of value to the program, particularly since they are going to be gun shy to giving money to small grant recipients. And I feel terrible because Mark really believed in me, the program director.

If there is something that can be done with me to help the program, I would do it any way I can. I'm happy to lecture and explain how to get yourself in trouble with more money than you can deal with. I don't know whether that would help. I didn't believe that I really misspent money until I finally had to really, really study exactly what I did, like a third person did it, and I admit I took too much money.

But I didn't not do research. I didn't advance the state of the art. The big problem is that I spent so much time being an amateur accountant that I couldn't be a professional

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Sentence

scientist.

If you can find it in your heart to -- I'm sorry. I'd like this to be over and I would like to move on. If I can help, I will. If making me an example by spending a few years will prison to help, that's what I need to do. If making me an example and I can prevent other people from getting the boneheaded mind-set that I have, maybe my experience is more valuable in some other setting.

I would like to finish the research. And the program would actually -- they are horrified of what's happened, but I think there is a reason why they never completely shut down the grant. They just want me to clean up my act. If we could finish the program with somebody else running it, that's fine, too. My boss at ATP could administer it for me.

Having worked in a big federal defense contractor, I see how they do it. If I had spent a couple of years working in a large corporation, perhaps I would see how these are done. I have never done that. I now know more about grants management than I care to.

I don't know what else to say. I'm really sorry. didn't try to hide it from anybody. And people call up and say, what's going on? I say, I have been convicted of stealing from the grant. If that's what I did, then I did it, but I never kept it a secret. I took pictures of everything I did. I kept records to hang myself, because I never thought I would

be hanging. I have never thought I would be impaled.

I'm redundant and I'm repetitive and I forget what I say, and I'm a disaster. I really am. I will be late for my own funeral. If I do something too fast, I always forget something, screw something up.

I apologize to the Court for keeping you this late and for everything else that I've done in the past.

Thank you, your Honor.

THE COURT: Thank you.

As I said, under the guidelines, the Court's findings are that the base offense level for this violation for Title 18 Section 666 is found under 2B1.1. The base offense level under subsection (a)(2) of that guidelines is 6. Because more than \$120,000 was lost through inappropriate expenses, 10 points are added. Making that decision the Court looked to guideline note which applies to 2F. The guideline note that applies to grants is federal grant under guideline commentary (f)(2)(ii). At that guideline of 16, the guidelines calls for a sentence of 21 to 27 months in prison.

Turning to 18 3553(a) of Title 18, the Court, as the Court must, consider any guidelines sentence as a result of the Booker decision, the Court must take into account the history and circumstances of the offense, history and characteristics of the defendant. The defendant here has no prior record.

And addressing the Court he said that he's never

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before had the responsibility before of handling a federal grant and dealt with contracts in the past. Those are contracts, I gather, to perform specific services for a fee, which is a little different than a federal grant. those circumstances relate to the circumstances of the offense and the history and characteristics of the defendant.

But the Court must also impose a sentence which is sufficient but not greater than necessary to comply with the purposes set forth in subparagraph 2 of 3553(a), and that is the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide a just punishment for the offense; B, to afford adequate deterrence to criminal conduct of other persons, and to protect the public from further crimes of the defendant -- C, to protect the public from further crimes of the defendant; and, D, to provide the defendant with needed educational and vocational training, medical care, or other correctional treatment in the most effective manner.

I don't believe that it would be necessary to protect the public from further crimes of the defendant that would serve to ameliorate the penalty imposed under the guidelines.

I have some difficulty with this case because delineating the intent of the defendant is difficult for me. It is true that the loss is at least \$120,000, but the defendant's intent in causing that loss is something that the

Court has been concerned about.

And, on the other hand, the Court has to consider a sentence that affords adequate deterrence to criminal conduct and the government gives these grants, they are placing a lot of trust in the grantee. It's important that the grantee not intentionally misapply the funds.

It's clear to me that there was an intentional misapplication of the rent money. The defendant was told time and time again not to use the rent funds for rent or for utilities. That's what the record here substantiates. That's a lesser sum than the sum found in the guidelines.

Under the circumstances, it seems to me as the first offense that the Court should not impose a sentence that is heavy as the guideline and, yet, impose a sentence that provides deterrence to other people. I am going to vary the sentence pursuant to Section 3553(a).

I am going to impose a sentence of 15 months under zone C of the guidelines, one half of the term to be served in prison and one half of home confinement, eight months' imprisonment, and the remainder in home confinement.

The term of supervised release is three years, restitution in the amount of \$120,000. That's required, I guess. And a special assessment of \$100. I think I'm right on the split sentence, that if it falls in the 12 category, I can give the split sentence.

Sentence

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MR. KWOK: Section 5C1.1, section D.

MR. EVERDELL: Yes, your Honor, I believe it is correct. It has to be a one-for-one ratio.

THE COURT: One has to be imprisonment, the other has to be home confinement.

MR. EVERDELL: That's correct.

THE COURT: That's to enable defendant to take care of his mother as soon as possible.

Three years of supervised release. There will also be a \$100 assessment as provided by the law. The conditions of supervised release are: The defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall not possess a firearm or destructive device. Mandatory drug testing is suspended due to the Court's determination that defendant poses little risk of future substance abuse. The defendant shall cooperate in the collection of DNA as directed by the probation officer.

Standard conditions of supervision 1 through 13 will also apply with the following special conditions: Defendant shall provide the probation officer with access to any requested financial information; defendant shall not incur new credit charges or open additional lines of credit without approval of the probation officer unless the defendant is in compliance with the installment schedule, installment payment schedule.

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Defendant is to report to the nearest probation office within 72 hours of release from custody and be supervised in the district of his residence. \$100 will be due immediately. That's the special assessment. The restitution shall be in the amount of \$120,000, payable to the clerk of the United States District Court for disbursement to Julie Weiblinger, U.S. Department of Commerce, National Institute of Standards and Technology, Advanced Technology Program Receivables Group, 100 Bureau Drive, Mail Stop 1624, Gaithersburg, Maryland 20899-1624.

The restitution shall be paid in monthly installments of 10 percent of gross monthly income over the period of supervision to commence 30 days after the date of release from custody, and the defendant shall notify the U.S. Attorney's Office for this district within 30 days of any change of name or residence address that occurs while any portion of the restitution remains unpaid.

If the defendant is engaged in BOP non-UNICOR program, the defendant shall pay \$25 per quarter towards the restitution. However, if the defendant participates in the BOP's UNICOR program as a grade 1 through 4, the defendant shall pay 50 percent of her UNICOR earnings to any financial penalties, consistent with Bureau of Prisons regulations of 28 CFI Section 45.11. The factors in 18 United States Code Section 3664(f)(2) were considered in formulating the payment

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There will be no fine in this case in view of the restitution requirements.

I gather you want to have a voluntary surrender, Mr. Rubinstein?

MR. RUBINSTEIN: Yes, your Honor. I was wondering, if it's possible, I don't know how it works. Is it possible to do the home confinement first and then the incarceration So this way if they can get his mother home, because her life expectancy isn't that long.

THE COURT: It seems to me that it could. I don't see anything under the section that says it couldn't. It certainly surprises me.

MR. EVERDELL: I'm sorry to interrupt, your Honor. I do have a different case with Judge Kaplan where he did allow that very thing to happen. If that precedent counts for anything, I believe there is a precedent in the Southern District for doing this.

THE COURT: I am going to do it that way. So the home confinement period will start. You better see that the defendant sees the probation officer in the next 24 hours, Mr. Rubinstein.

MR. RUBINSTEIN: Absolutely. I will go there tomorrow.

THE COURT: We will make arrangements for home

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1 confinement to start. If you have home confinement, there will 2 have to be a telephone without call forwarding in the residence 3 in which the defendant would be located because they have to know that he's not leaving the premises during the period of 4 5 home confinement. Home confinement is not to interfere with religious services or employment, but it will require the 6 7 defendant to be home in the evening and nonworking hours part 8 of the day. 9 MR. RUBINSTEIN: And medical, your Honor? 10 THE COURT: What? MR. RUBINSTEIN: And medical. 11 12 THE COURT: Of course, he can attend medical 13 appointments for himself and his mother. 14 There will be no call forwarding or call waiting or 15 modem attached to the telephones. It's clear that he is 16 serving his term of home confinement without any further investigation by the probation office. 17 MR. RUBINSTEIN: Your Honor, would your Honor 18 19 consider -- first, on the restitution, did your Honor say how 20 that's to be paid? 21 Yes, I did. 10 percent of gross pay. THE COURT: MR. RUBINSTEIN: Is that without interest? 22 23 I leave that to the greater, higher THE COURT:

authorities. I believe that interest does run.

MR. RUBINSTEIN: Would your Honor -
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(212) 805-0300

1	THE COURT: I believe interest runs. But it can start
2	after the period of incarceration.
3	MR. RUBINSTEIN: Your Honor, I believe that the
4	defendant wishes to appeal this matter. That's what I've been
5	informed. In view of that, I wonder if your Honor will
6	consider releasing him pending the appeal. He is going to be
7	on house arrest for seven and a half I'll reserve the right
8	to make that application.
9	THE COURT: He can appeal, but I don't see where you
LO	can appeal, but is that beneficial to your situation for me to
11	suspend the imposition of sentence pending the appeal?
L2	MR. RUBINSTEIN: I would like to serve the house
13	arrest portion while his mother is alive.
L4	THE COURT: I can't break it up, I don't believe,
15	under the statute.
16	MR. RUBINSTEIN: I'll have to consider it, Judge. We
L7	will go to probation tomorrow. As far as the house arrest, we
18	don't have a problem with starting that immediately.
19	THE COURT: Make an expedited appeal.
20	MR. RUBINSTEIN: File an expedited appeal?
21	THE COURT: All right.
22	MR. RUBINSTEIN: Thank you very much, your Honor.
23	Good night.
24	MR. KWOK: A few things, your Honor.
25	If the government could request the Court to give an

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1	oral pronouncement of his forfeiture order. There is a
2	forfeiture allegation in the indictment.
3	THE COURT: Is forfeiture required here? I didn't see
4	that in the presentence report.
5	MR. KWOK: It is not reflected in the presentence
6	report, but, as your Honor might recall, there was an order by
7	stipulation between the parties where we seized the proceeds
8	from the sale of defendant's apartment. And so if we could
9	forfeit that in partial satisfaction of the restitution
10	obligation.
11	THE COURT: You can submit a forfeiture order, yes.
12	MR. RUBINSTEIN: The marshals are holding those funds,
13	if that's what the government is talking about.
14	THE COURT: I have to make an order with respect to
15	it. The marshals already have it.
16	MR. KWOK: But the order the Court signed says that
17	the money will be held with the U.S. Marshals pending further
18	order of the Court. We will certainly submit an order to
19	release those funds.
20	THE COURT: So ordered.
21	MR. KWOK: Thank you.
22	Also, just one last matter. Because this is a second
23	superseding indictment, the government moves that the
24	underlying indictments be dismissed.

THE COURT:

That's granted. I am sure there is no

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opposition to that.

MR. RUBINSTEIN: No opposition, your Honor.

THE COURT: You have ten days to file a notice of appeal, Dr. Karron. All you have to do is write a letter to the Court, United States District Court, 500 Pearl Street, New York, New York, and say, I wish to appeal and that will preserve your appeal, but you have to do it within the ten-day period because, otherwise, the Second Circuit will say you waived your right to appeal by not filing that letter within the ten-day period.

You understand me? You're nodding yes.

If you want to appeal, you just write the letter within ten days and that preserves your right. If you don't write it in the ten-day period, you lose your right to appeal. If you don't have funds for an appeal, the Court of Appeals will decide on it for you to handle your appeal free of charge.

MR. RUBINSTEIN: What they do, Judge, in reality, is, they assign trial counsel free of charge. I had that experience with Judge Kaplan, who was mentioned once today already.

8ARUKARS 1 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK 2 3 UNITED STATES OF AMERICA 4 07 CR 541 (RPP) v. 5 DANIEL B. KARRON, 6 Defendant. 8 New York, N.Y. October 27, 2008 9 10 11 Before: 12 HON. ROBERT P. PATTERSON 13 District Judge 14 **APPEARANCES** 15 MICHAEL J. GARCIA United States Attorney for the Southern District of New York 16 BY: CHRIS EVERDELL CHI T. STEVE KWOK 17 Assistant United States Attorneys 18 RUBINSTEIN & COROZZO, LLP Attorneys for Defendant 19 BY: RONALD RUBINSTEIN 20 21 22 23 24

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(Case called)

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on Friday because I got word from the Department of Probation that the Department of Probation would not honor the sentence that I imposed in this case and would imprison Dr. Karron for 15 months and that you could not have a sentence that imposed home confinement first. I had imposed home confinement first so that Dr. Karron could take care of his mother during that period, but the Bureau of Prisons won't observe it.

I am in a difficult position.

I would be glad to give you the memo from the Bureau of Prisons from the probation department if you want to look at it.

MR. RUBINSTEIN: Your Honor, that was going to be my request, what is contained on page 2. In order to address the Court's intention that Dr. Karron be allowed to care for his elderly mother, to recommend that you set a voluntary surrender date in the future and entertain requests according to the situation.

THE COURT: We did extend the voluntary surrender date, did we not?

MR. RUBINSTEIN: No, we did not have any provision for voluntary. What I would respectfully request for your Honor is that we put it down for the first week in January and then see what the situation is with his mother and then your Honor could

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make the determination about the voluntary surrender at that time. I think that would be in accordance with the intent of the Court that he be --

THE COURT: You can file a notice of appeal for one thing. Let's not overlook that. But I don't see how, having imposed a sentence, I can change it. I don't know that I have any power to do what you are suggesting, for one thing.

MR. RUBINSTEIN: You always have the power, your Honor, as far as when the defendant can surrender.

THE COURT: That part, if I re-impose sentence, but putting off sentence as you suggest -- or maybe I misunderstood you -- judgment has been entered in this case. And when they got the judgment, they replied to this memorandum saying that the Bureau of Prisons wouldn't honor the judgment because of their regulations.

MR. RUBINSTEIN: Maybe I misspoke. I am in agreement with the recommendation of the probation department. The Court can set a voluntary surrender date in the future. And then at that time you can entertain a request for an adjournment of that surrender date.

THE COURT: I am perfectly willing to set a voluntary surrender date in the future, but at this time it would be now because I have to act within one week.

MR. RUBINSTEIN: I would ask your Honor, if your Honor would entertain a voluntary surrender date at this time for the

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first week in January.

THE COURT: I have no problem with that.

Does the government have any problem with that?

MR. KWOK: If I understand Mr. Rubinstein correctly, he is suggesting the setting of a voluntary surrender date today with extensions from time to time.

THE COURT: As I understand it, he is saying I agree that the sentence has to be modified as recommended by the probation department, but I want to have his surrender date stayed until the first week in January.

MR. KWOK: The government's position is that a surrender date should be set a few weeks from now. As Mr. Rubinstein is aware, essentially putting it off until later and with indefinite extensions, depending on the circumstances --

THE COURT: I am not going to do indefinite extensions. If you file a notice of appeal, that is another matter. Then you can ask for bond pending appeal. I cannot go putting it off and off and off.

MR. KWOK: That is the government's concern because of the uncertainty of the mother's health situation. We are concerned that this would amount to, essentially, bail pending appeal without making an application for bail pending appeal, and we all know that the standard is extremely high.

The government would ask that a surrender date be set

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no later than a few weeks from now. And then if Mr. Rubinstein wants to file a notice of appeal, he can ask the Circuit Court for relief if he wants appeal or to have bail pending appeal.

MR. RUBINSTEIN: Your Honor, I don't think that meets with what your Honor's initial intention was, and I think what the probation department says spells it out exactly to accomplish --

THE COURT: Give me back my memorandum.

MR. RUBINSTEIN: Page 2.

THE COURT: I have some other people waiting here and I cannot deliberate on this forever here.

I see what you are pointing to, but I cannot keep putting it off forever on that type of application, bail pending appeal. I don't think that Dr. Karron is likely to flee, but I am not going to do that, Mr. Rubinstein, the way that you are suggesting. I will put it off for over the holidays so that he can surrender after January 10th or if you get bail pending appeal until January 10th.

MR. RUBINSTEIN: Would you entertain it now?

THE COURT: I would rather have it sometime later because I have these people waiting.

MR. RUBINSTEIN: We will put it down for January 10th, did your Honor say?

THE COURT: That will get us past the Christmas holidays, and I will impose a split sentence of seven and a

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half months of imprisonment at the Bureau of Prisons to be followed by seven and a half months of home confinement and supervised release so that he can take care of his mother. And that term of supervised release would be three years, the first seven and a half months being home confinement.

It will be the same conditions of supervised release that I imposed on October --

MR. RUBINSTEIN: -- 20th, your Honor.

THE COURT: 20th, and the same standard conditions that I imposed on that date will also remain as part of this judgment.

The special assessment of \$100 will also apply, as well as the restitution order of October 20 and the amount of payments to be made pursuant to the restitution order. In other words, the monthly payment, 10 percent of gross monthly income, and the period of supervision to commence 30 days after release from home confinement.

And the defendant shall notify the United States
Attorney of any change of address during the period of
supervision.

Special instructions with regard to the payment of the monetary penalties will apply.

Is there anything further?

MR. RUBINSTEIN: I take it that the sentence technically and legally is imposed as of today, so the 10 days

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for filing a notice would start today and not --

THE COURT: I guess it would be from the date of this judgment or this sentence and that you have 10 days to challenge the terms of the sentence.

MR. KWOK: Do I understand the January 10 date to be the surrender and should defense counsel wish to make bail pending appeal --

THE COURT: He would have to make it before January 10th so that he can get a decision from the court on the bail pending appeal.

MR. RUBINSTEIN: Thank you very much, your Honor.

MR. KWOK: Thank you, your Honor.

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK DANIEL B. KARRON, DECLARATION Petitioner, 11 Civ. 1874 (RPP) 07 Cr. 541 (RPP) - v. -UNITED STATES OF AMERICA,

Respondent.

STATE OF NEW YORK COUNTY OF NEW YORK ss.: SOUTHERN DISTRICT OF NEW YORK

RACHEL ONDRIK, pursuant to Title 28, United States Code, Section 1746, hereby declares under penalty of perjury:

- I am a Special Agent with U.S. Department of Commerce, Office of the Inspector General ("DOC-OIG"). I have been employed by DOC-OIG for approximately ten years.
- I was one of the lead case agents for the case of United States v. Daniel B. Karron, 07 Cr. 541 (RPP). As such, I was personally involved in the investigation of this case.
- 3. As part of my responsibilities as one of the lead case agents, I reviewed documents relevant to this case, including all of the files maintained by the National Institute for Science and Technology ("NIST") pertaining to the Advanced Technology Program ("ATP") grant awarded to Dr. Karron's company, Computer Aided Surgery, Inc. ("CASI"), in October 2001. During the course of the investigation, I thoroughly reviewed all of the

documents pertaining to CASI's ATP grant, including the files maintained by Hope Snowden, the grant specialist who handled budget and finance issues related to the grant, and the files maintained by Bettijoyce Lide and Jayne Orthwein, who handled the technical aspect of the grant, and did not find any exculpatory evidence.

- 4. Also as part of the investigation, I contacted a number of potential witnesses and conducted several witness interviews. Among the individuals that I interviewed were Marc Stanley, Jayne Orthwein, Chaya Levin, Peter Ross, and James Cox. I did not speak to or interview Amiee Karron, Nathaniel Karron, Jill Feldman, or Margaret Ferrand. None of the witnesses that were interviewed, including Mr. Stanley, Ms. Orthwein, Ms. Levin, Mr. Ross, and Mr. Cox, provided any exculpatory evidence.
- 5. At no time during any of the interviews or phone calls that I conducted, including the interviews of Mr. Stanley, Ms. Orthwein, Ms. Levin, Mr. Ross, and Mr. Cox, did I or any of the other DOC-OIG agents attempt to coerce, threaten, frighten, or intimidate the witnesses, nor did I or any of the other agents attempt to persuade them not to testify at trial.
- 6. In addition to conducting the investigation of this case, I also assisted with the preparation for trial. In or about May 2008, a few weeks before the trial began in June 2008, I sent the entire original grant file for the CASI ATP grant to

prosecutors in New York so that it could be available for trial.

I declare under penalty of perjury that the foregoing is true and correct.

Dated:

New York, New York

July 15, 2011

RACHEL ONDRIK Special Agent

U.S. Department of Commerce

Office of the Inspector General